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Book 4
UNIFORM BILLS OF LADING ACT

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PREFACE

This volume is the fourth of the series known as Uniform Laws, Annotated, a series designed to render of easy access to the profession the most recent accomplishment in the development of legal jurisprudence. Uniformity of the law is the present day aim and hope of the legal student. A decided step in that direction is the gradual centralization of the law making power in the Federal government, but a still more remarkable advance has been made by the adoption in our state jurisdictions of uniform laws dealing with matters of state cognizance. Every state legislature has adopted one or more of the acts recommended by the National Conference of Commissioners on Uniform State Laws, and the number of laws adopted and the number of states adopting them are both increasing annually.

It goes without saying that the lawyer who would be up to the times must have these laws, and of still greater necessity is it that he should have the decisions construing those laws. Any question of the relative value of decisions as precedents entirely disappears when the statute law on which they are based is identical everywhere.

To present these uniform laws and these all important decisions in a compact compass is the purpose of this series, a purpose best subserved by the publication of each law with its annotations, as far as warranted, in a single volume. In other words — "One law, one book."

This fourth volume, presenting the Uniform Bills of Lading Act, is characterized by the same care in compilation and annotation as the other volumes of the series. Particular attention, indeed, may be directed to the annotations. Because of the enactment of the Federal Bills of Lading Act and the consequent limited application of the Uniform Bills of Lading Act, it is of primary importance to know whether a particular decision not expressly referring to the Uniform Act was rendered with respect to an interstate, an intrastate, or a foreign shipment. In every annotation in this volume, unless the decision clearly points its own application, the nature of the shipment is carefully noted. Furthermore, the Federal Act is set out at length, with annotations, in the Appendix, and in the statutory notes to each section

of the Uniform Act, the corresponding section of the Federal Act is cited and contrasted. By such means, a most difficult subject is rendered comparatively easy of comprehension.

This and each of the other volumes of the series will be kept up to date by the publishers' patented device of a Cumulative Supplement containing all new decisions and statutory changes, and mechanically constructed so as to slip into a pocket at the end of the book.

THE PUBLISHERS.

Uniform Bills of Lading Act

Table of states wherein act has been adopted

	Adopting act	Date of taking effect	Present form of act
Alaska.....	Laws 1913, ch. 59	Jan. 2, 1914	Original act.
Arizona.....	Laws 1921, ch. 48	Mar. 5, 1921*	Original act.
California.....	Laws 1919, ch. 365	July 22, 1919	Civil Code, §§ 2126–2132c.
Connecticut...	Laws 1911, ch. 182	Aug. 16, 1911*	Gen. Stats. 1918, §§ 4613–4667.
Idaho.....	Laws 1915, ch. 16	Feb. 19, 1915*	Comp. Stats. 1919, §§ 6065–6118.
Illinois.....	Laws 1911, p. 227	June 5, 1911*	Jones & Add. Ann. Stats. 1913, §§ 2166–2221.
Iowa.....	Laws 1911, ch. 155	July 4, 1911	Ann. Code, Supp. 1913, §§ 3138-b–3138-b56.
Louisiana.....	Laws 1912, Act 94	Oct. 1, 1912	Wolff's Const. & Stats. 1920, pp. 1447–1456.
Maine.....	Laws 1917, ch. 132	Mar. 29, 1917*	Original act
Maryland.....	Laws 1910, ch. 336	June 1, 1910	Bagby's Ann. Code 1911, vol. 1, pp. 303–316.
Massachusetts..	Laws 1910, ch. 214	Mar. 14, 1910*	Rev. Gen. Laws 1920, ch. 108.
Michigan.....	Laws 1911 No. 165	April 25, 1911*	Comp. Laws 1915, §§ 8174–8229.
Minnesota.....	Laws 1917, ch. 399	June 1, 1917	Gen. Stats., Supp. 1917, §§ 4434-1–4434-57.
Missouri.....	Laws 1917, p. 564	April 9, 1917*	Rev. Stats. 1919, §§ 13523–13576.
New Hampshire	Laws 1917, ch. 81	June 1, 1917	Original act
New Jersey.....	Laws 1913, ch. 156	July 1, 1913	Comp. Stats., Supp. 1911–1915, pp. 48–57.
New York.....	Laws 1911, ch. 248	Sept. 1, 1911	Personal Property Law, §§ 187–241.
North Carolina.	Laws 1919, ch. 65	July 1, 1919	Original act.
Ohio.....	Laws 1911, p. 138	Jan. 1, 1912	Gen. Code, §§ 8993-1–8993-54.
Pennsylvania..	Laws 1911, p. 838	Jan. 1, 1912	Purdon's Dig., vol. 5, pp. 5333–5339.
Philippine Islands.	.....	.....	.....
Rhode Island...	Laws 1914, ch. 1029	July 1, 1914	Original act.
Vermont.....	Laws 1915, No. 149	Mar. 19, 1915*	Gen. Laws 1917, §§ 3061–3113.
Washington.....	Laws 1915, ch. 159	Mar. 18, 1915*	Pierce's Code 1919, §§ 428–482 (Rem. & Bal. Code, §§ 3385-1–3385-56).
Wisconsin.....	Laws 1917, ch. 179	Sept. 1, 1917	Stats. 1919, §§ 1684n-1–1684n-55.

* Date of approval.

Cite this volume

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UNIFORM BILLS OF LADING ACT.

PART I.

The Issue of Bills of Lading.

PART II.

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PART III.

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PART I.

The Issue of Bills of Lading.

§ 1. Bills governed by this act.— Bills of Lading issued by any common carrier shall be governed by this act.

STATUTORY NOTES.

The **Federal** Bills of Lading Act (Act of August 29, 1916; see Appendix) which became effective on January 1, 1917, follows closely the provisions of the Uniform Act, but with a number of important changes, evidently designed to adapt the Uniform Act to interstate commerce. Thus, section 1 of the Federal act provides as follows: "Bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country, shall be governed by this Act." The manifest effect of this specific declaration is that since January 1, 1917, the Uniform Act has been applicable only to bills of lading issued with respect to intrastate shipments or to shipments in foreign commerce not governed by the Federal act.

In some states, such as **Maine, Minnesota** and **North Carolina,** wherein the Uniform Act was not adopted until after the passage of the Federal act, this fact has been recognized and the Uniform Act has been modified so as to make it apply specifically only to intrastate commerce. Thus, the Maine act (Laws 1917, ch. 132) inserts in section 1 the words "for the transportation of goods within this state" after the words "common carrier."

The Minnesota act (Laws 1917, ch. 399) follows the Federal act closely but with such changes as manifest an intention that the Uniform Act shall apply to all bills not covered by the Federal act. In fact, the compilers of the Minnesota act have stated their conclusion as to the applicability of that statute as follows: "Bills of lading which are not governed by the Federal act above quoted and which, therefore, are governed by this act are, bills of lading on shipments made wholly within this state, bills of lading on shipments made wholly within another state, which may come into this state, and bills issued in any foreign country, as Canada, whether for shipments to this state or elsewhere."—See pamphlet on Uniform Commercial Acts of Minnesota, by S. R. Child and Donald Bridgman.

The North Carolina act (Laws 1919, ch. 65) is almost an exact copy of the Federal act. However, similarly to the Minnesota act, it departs in phraseology from the Federal act wherever such a change is necessary to adapt the act to intrastate commerce. Thus, section 1 of the North Carolina act provides as follows: "Bills of lading issued by any common carrier for the transportation of goods from one point in North Carolina to another shall be governed by this act."

The **California, Missouri, New Hampshire** and **Wisconsin** acts, although adopted subsequently to the passage of the Federal act, fail to make any changes in the Uniform Act which clearly evince an intent to confine the operation thereof to intrastate commerce. See Cal. Laws 1919, ch. 365; Mo. Laws 1917, p. 564; N. H. Laws 1917, ch. 81; Wis. Laws 1917, ch. 179.

With respect to those jurisdictions wherein the Uniform Act was adopted prior to the passage of the Federal act, it is at least a mooted question whether the state act did not apply even to interstate shipments in respects other than the right of a carrier to limit its liability or the time to assert a claim for damages by the insertion of a clause to that effect in a bill of lading. Congress had legislated on that subject in 1906, prior to the drafting of the Uniform Act by the Commissioners on Uniform State Laws, by what is known as the Carmack Amendment to the Interstate Commerce Act. Hence, the Uniform Act has never had application to interstate shipments in the respects mentioned. But as to all other matters connected with bills of lading, such as their negotiation and the like, Congress was silent until January 1, 1917, and therefore it may well be that prior to that date the

Uniform Act governed the rights of the parties, in jurisdictions wherein that Act was in force, even in the case of an interstate shipment. See, as supporting this conclusion, the statements made by the courts in Gubelman v. Panama R. Co., (1920) 192 App. Div. 165, 182 N. Y. S. 403, and in Stamford Rolling Mills Co. v. Erie R. Co., (1917) 257 Pa. St. 507, 101 Atl. 823, quoted infra in the " Case Notes " under sections 1 and 24 respectively.

The **Michigan** act was adopted in 1911 (Laws 1911, No. 165). At that time there were in force in Michigan two other statutes relating to bills of lading, viz.: Laws 1909, No. 271, dealing specifically with the subject, and Laws 1909, No. 300, touching on bills of lading incidentally in connection with the creation of the state Railroad Commission. These two earlier statutes were manifestly not deemed to have been repealed, either in whole or in part, by the Uniform Act, for the legislature which adopted the Uniform Act also passed an act (Laws 1911, No. 234) amending Act No. 271 of the Laws of 1909, and three subsequent legislatures have amended Act No. 300 of the Laws of 1909 (see Laws 1913, No. 389; Laws 1915, No. 278; Laws 1917, No. 387). It is impracticable to attempt here a reconciliation of these three independent statutes having relation to bills of lading. It remains for the practitioner who would seek to determine the law of Michigan on the subject to read the statutes together.

Partial Invalidity.— Section 44 of the Federal act contains the following provision: " The provisions and each part thereof and the sections and each part thereof of this Act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof." — See Appendix. The North Carolina act contains a similar provision (section 44).— See Laws 1919, ch. 65.

Case Notes.

Constitutionality.

The Uniform Bills of Lading Act is not to be construed as designed to control the nature and effect of bills of lading issued in foreign countries and in other states and therefore cannot be said to be unconstitutional as a regulation of foreign and interstate commerce. Roland M. Baker Co. v. Brown, (1913) 214 Mass. 196, 100 N. E. 1025.

Applicability of Act to Interstate Shipment.

It has been held that with respect to matters pertaining to its negotiability, a bill of lading issued prior to the adoption of the Federal act for a shipment from New York state to the Canal Zone, was governed by the New York Uniform Act. Gubelman v. Panama R. Co., (1920) 192 App. Div. 165, 182 N. Y. S. 403, wherein Page, J., said: "This not being an intrastate shipment, but a shipment from this state to the Canal Zone, and for some part of the shipment through a foreign country, the statutes of the United States, if there were any covering the subject, would supersede the state statute. Where Congress has not legislated, however, the state has power to regulate the operation and effect of a contract for an interstate shipment. * * * The federal Bill of Lading Act [Fed. St. Ann. 1918 Supp. p. 72], although passed before this bill of lading was issued, did not take effect until January 1, 1917, and expressly provides that it shall not apply to bills made and delivered prior to the taking effect thereof. While the Carmack Amendment [39 Stat. 441; 4 Fed. St. Ann., 2d ed. 507] dealt with the limitation of liability and certain other matters with respect to bills of lading, there is nothing therein with reference to the negotiability of such bills. There is no statute of the United States governing this case; therefore the state statute is controlling."

Applicability of Act to Foreign Shipment.

The Uniform Bills of Lading Act has no bearing on the rights and obligations of the owner and the carrier of goods under a foreign bill of lading, but the rights as between themselves of the parties to a domestic transfer of such a bill are governed by the act. Roland M. Baker Co. v. Brown, (1913) 214 Mass. 196, 100 N. E. 1025.

Although a bill of lading is issued in a foreign country, the Uniform Act is applicable, as between themselves, to the rights of the consignee and terminal carrier in Massachusetts. Voghel v. New York, etc., R. Co., (1913) 216 Mass. 165, 103 N. E. 286.

§ 2. Form of bills. Essential terms.—Every bill must embody within its written or printed terms:

(a) The date of its issue,

(b) The name of the person from whom the goods have been received,

(c) The place where the goods have been received,

(d) The place to which the goods are to be transported,

(e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,

(f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in Section 23, and

(g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section.

COMMISSIONERS' NOTE.

The provisions of this section are in accordance with business usage. The requirement of printing the words "order of" before the consignee's name is especially desirable in order to prevent the alteration of straight bills into negotiable bills. The only other provision of the section on which comment has been made is (f). The second clause in (f) has been added in this draft to meet objections made by representatives of the carriers.

Though it is desirable that all bills of lading shall conform to the rules here laid down, the essential point is that negotiable bills shall do so, and as to them only is a sanction imposed for failing to insert the terms required by the bill.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section. See Appendix.

The **North Carolina** act also omits this section.— See Laws 1919, ch. 65.

CASE NOTES.

Construction of Bill as Contract.

So far as a bill of lading states the terms on which the transportation, detention and delivery of the goods are to be made, it stands as a contract; and, being in writing, its construction is

a question of law. Booth v. New York Central R. Co., (1921)— Vt.—, 112 Atl. 894 (no reference to Uniform Act—interstate character of this shipment ignored).

Reformation of Bill on Ground of Mistake.

A bill of lading may be reformed in equity to correct a statement therein inserted by mistake as to the destination of the shipment. Brunswig v. Bush, (Mo. App. 1920) 221 S. W. 759 (no reference to Uniform Act — interstate character of shipment ignored).

§ 3. Form of bills. What terms may be inserted.—A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

(a) Be contrary to law or public policy, or

(b) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

COMMISSIONERS' NOTE.

Much litigation has arisen over the point involved in 3 (b). The provision as drawn is in accordance with the weight of authority (6 Cyc. of Law 393) and is similar to the corresponding section of the Warehouse Receipts Act.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section. See Appendix.

The **North Carolina** act also omits this section.—See Laws 1919, ch. 65.

CASE NOTES.

Limited Liability Clause — Generally.

As has been pointed out in the " Statutory Notes " to section 1 supra, the validity of limited liability clauses in bills of lading issued for interstate shipments is governed by federal statutory provisions, and the Uniform Act has no relation thereto. Since interstate shipments largely predominate in the carriage of goods, the cases bearing on the validity of limited liability clauses

with respect to strictly intrastate shipments are comparatively few in number. In the jurisdictions wherein the Uniform Act has been adopted, there apparently have been but three decisions discussing indirect connection with the provisions of the Uniform Act, the validity of a clause absolving the carrier from liability for damages (see infra, hereunder, the subdivisions "Liability for Injury on Connecting Line," "Liability for Discrepancy in Weight," and "Liability for Freezing"). There are, however, a number of cases, each involving either an intrastate shipment or a shipment the character of which is not revealed, and decided without direct reference to the Uniform Act although that act was then in force in the state, which have discussed the validity of various forms of limited liability clauses. These cases are hereinafter cited, in their appropriate subdivisions, for what they may be worth as authorities indirectly or impliedly construing the Uniform Act. It will be observed that cases involving live stock contracts, express receipts and baggage receipts have been included although it may be open to doubt whether such shipping contracts fall within the purview of the Bills of Lading Act.

Limited Liability Clause — Amount of Liability.

In several cases the courts have considered, without reference to the Uniform Act, the validity of a stipulation in a shipping contract limiting the amount of liability of the carrier for loss of or injury to the goods. Thus it has been held that in the absence of a reduced rate or other consideration a carrier cannot limit the amount of its liability to less than the value of the goods shipped. Hull v. Chicago, etc., R. Co., (1918) 200 Mo. App. 392, 208 S. W. 494 (live stock contract — intrastate shipment).

But a reasonable agreement between a shipper and a carrier by which in consideration of the rate charged the amount recoverable in case of loss of or damage to the property shipped is limited to a specified amount, is valid and binding. Johnson v. New York, etc., R. Co., (1914) 217 Mass. 203, 104 N. E. 445 (bill of lading — shipment apparently intrastate); McKinney v. Boston, etc., R. Co., (1914) 217 Mass. 274, 104 N. E. 446 (live stock contract — shipment apparently intrastate).

So a provision in an express receipt limiting the amount of recovery in case of loss to a certain sum if the true value is not declared at the date of shipment is binding on the shipper. Boynton v. American Express Co., (1915) 221 Mass. 237, 108 N. E. 942 (interstate shipment, but case decided in accordance with law

of forum); Braus v. Manhattan Delivery Co., (1912) 78 Misc. 371, 138 N. Y. S. 324 (character of shipment not revealed); Granbery v. Taylor, (1916) 95 Misc. 585, 159 N. Y. S. 932 (intrastate shipment); Lichterman v. Barrett, (1916) 95 Misc. 594, 159 N. Y. S. 929 (intrastate shipment); Greenberg v. Rapid Delivery Express Co., (1917) 163 N. Y. S. 102 (intrastate shipment); Kolb v. Taylor, (1918) 102 Misc. 220, 168 N. Y. S. 685 (character of shipment not revealed); Lewis v. American Ry. Express Co., (1920) 111 Misc. 146, 180 N. Y. S. 751 (character of shipment not revealed). See also Bennett v. Virginia Transfer Co., (1913) 80 Misc. 222, 140 N. Y. S. 1055 (shipment apparently intrastate).

But it has been held that a clause in a memorandum signed by the shipper limiting the responsibility of a trucking company to "$50 for any article, together with the contents thereof" was not effective to release the carrier from liability for its own acts or those of its employees amounting to misfeasance. Heuman v. M. H. Powers Co., (1919) 226 N. Y. 205, 123 N. E. 373, reversing (1916) 175 App. Div. 627, 162 N. Y. S. 590 (intrastate shipment — theft by employee).

And in a case wherein it was doubted whether a baggage check was a bill of lading, it not describing any goods, or mentioning the names of the consignor and consignee, or stating the place of destination, and it not being negotiable, the court refused to uphold a stipulation on the back of such a check limiting the amount of the carrier's liability. Fessler v. Detroit Taxicab, etc., Co., (1919) 204 Mich. 694, 171 N. W. 360, 5 A. L. R. 983 (intrastate shipment).

Compare, however, Secoulsky v. Oceanic Steam Navigation Co., (1916) 223 Mass. 465, 112 N. E. 151, wherein the court, invoking the law of the forum, upheld a stipulation in a contract for the shipment of baggage from a foreign country limiting the liability of the carrier to a certain sum for the loss thereof.

Limited Liability Clause — Time for Filing Claim or Bringing Suit.

In each of the following cases the court without reference to the Uniform Act upheld a clause in the shipping contract requiring claims for loss or damage to be made or suit therefor to be brought within a specified time: Hockaday v. Chicago, etc., R. Co., (1916) 201 Ill. App. 453 (bill of lading — shipment apparently intrastate); Childers v. Illinois Cent. R. Co., (1917) 206 Ill. App. 535 (live stock contract — intrastate shipment); Brown v.

Chicago, etc., Refrigerator Co., (1917) 207 Ill. App. 89 (bill of lading — character of shipment not revealed); Fletcher v. New York Cent., etc., R. Co., (1918) 229 Mass. 258, 118 N. E. 294 (live stock contract — intrastate shipment); Kudolph Wurlitzer Co. v. Barrett, (1915) 154 N. Y. S. 226 (express receipt — character of shipment not revealed); Barter v. Barrett, (1919) 186 App. Div. 715, 174 N. Y. S. 779, affirming (1917) 98 Misc. 646, 163 N. Y. S. 244 (express receipt — intrastate shipment).

Limited Liability Clause — Written Notice of Claim.

It has been held that a stipulation in an express receipt requiring claims for loss or damage to be made in writing within a certain time will not be given effect so as to absolve the carrier from liability for its own negligence. Gifford v. Fargo, (1919) 106 Misc. 599, 176 N. Y. S. 568 (no reference to Uniform Act — intrastate shipment).

Limited Liability Clause — Liability for Injury on Connecting Line.

A provision in a bill of lading limiting the liability of the carrier to loss or damage on its own line is binding on the shipper. Bean v. Jackson, (1917) 207 Ill. App. 577, quoted from infra in the " Case Notes " under section 10.

Limited Liability Clause — Liability for Shipment To or From Private Siding.

A provision in a bill of lading that property " when received from or delivered on private or other sidings, wharves, or landings, shall be at the owner's risk until the cars are attached to and after they are detached from trains " is reasonable in the eye of the law and not inconsistent with public policy. Atlantic Refining Co. v. Pennsylvania R. Co., (1921) — Pa. St. 113, — Atl. 570 (no reference to Uniform Act — character of shipment not revealed); Bianchi v. Montpelier, etc., R. Co., (1918) 92 Vt. 319, 104 Atl. 144 (no reference to Uniform Act — interstate character of shipment ignored).

Limited Liability Clause — Liability for Shipment To or From Station Without Agent.

A provision in a bill of lading that " property destined to or taken from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at the risk of the owner after unloaded from the cars or vessels or until loaded into cars

or vessels," is valid. Hanger v. Bloomington, etc., R. Co., (1915) 193 Ill. App. 475 (no reference to Uniform Act — shipment apparently intrastate).

Limited Liability Clause — Liability for Discrepancy in Weight.

A condition printed on the back of a bill of lading exempting the carrier from liability for differences in the weights of grain, seed or other commodities caused by discrepancies in elevator weights is contrary to the public policy of Illinois as indicated by constitutional and statutory provisions of that state. Shellabarger Elevator Co. v. Illinois Cent. R. Co., (1917) 278 Ill. 333, 116 N. F. 170, L. R. A. 1917E 1011.

In that case, referring to a statute (Hurd's Stat. 1916, p. 2092; J. & A. ¶ 8920) regulating the transportation of grain, the court said: " The statute requires the railroad company to weigh carefully and correctly grain received for shipment at the time of its receipt, to give a receipt for the true and correct amount and to weigh out and deliver the full amount of such grain, without deduction for leakage, shrinkage or other loss. The statute was passed in compliance with the requirements of section 6 of article 13 of the constitution, which imposed upon the General Assembly the duty of passing all necessary laws to give full effect to article 13, and directed that such article should be liberally construed so as to protect producers and shippers. The object of section 4 was the protection of producers and shippers against short weights in delivery, through which it was thought they were frequently defrauded by the railroad companies out of a part of the grain in each carload, the loss in each case being small but amounting in the aggregate to a large sum. In the constitutional convention it was said constant complaints were coming up from the farmers of short weights upon shipments, and that the railroad companies were not held, in their own estimation, responsible for the delivery of the same quantity of grain that they received. One member of the convention estimated the various frauds and extortions practiced upon the farmers and shippers by transportation companies, warehouses and the false weights used, at ten milions of dollars a year. To protect producers and shippers from these frauds believed to exist, section 4 of article 13 of the constitution was adopted, requiring railroad companies to weigh or measure grain shipped and receipt for the full amount and to deliver the full amount at the destination. The natural meaning of the

words of this section is that the railroad company shall be responsible for the delivery of the number of pounds of grain it shall have received, and that is the meaning which must be given it. In adopting the constitution this provision was thought so necessary for the protection of shippers upon railroads, on account of the advantage supposed to be possessed by the railroad companies in their dealings with shippers, as to require its embodiment in the fundamental law of the state. It was immediately enacted in the form of a statute by the first legislature after the constitution was adopted, and it would be contrary to the public policy thus indicated to permit it to be nullified by an indorsement on a bill of lading or a contract between a railroad company and its shippers. To do so would be to give to railroad companies the same advantage on account of which the constitutional provision was adopted. We assume that 'discrepancy in elevator weights' means difference between weights at the place of delivery and the place of shipment. While the railroad company is responsible for the delivery of the number of pounds of grain received and its receipt in the bill of lading evidence of the quantity received, the constitutional provision was not intended to make the bill of lading an absolute policy of insurance or extend the responsibility of the carrier beyond its responsibility at common law in other respects. It is bound to deliver at the destination the number of pounds of grain received, unless relieved of this obligation to deliver by the act of God or the public enemy or the negligence of the shipper."

Limited Liability Clause — Liability for Freezing.

Under section 3 of the Uniform Act, a stipulation in a bill of lading expressly absolving the carrier from liability for the consequences of freezing is binding on the shipper. Lardie v. Manistee, etc., R. Co., (1916) 192 Mich. 77, 158 N. W. 31, wherein the court said: "The stipulation in this contract does not attempt to relieve from liability for negligence. It relieves from liability for a loss which the parties contemplated might be caused by an element beyond the control of both parties, wholly unrelated to any act or omission of the carrier. * * * Section 6761, How. Stat. 1913, permits the carrier to insert in the bill of lading only such conditions as do not impair his obligation to exercise the 'degree of care in the transportation and safekeeping of the goods intrusted to him which a reasonably careful man would

exercise in regard to similar goods of his own.' Uniform Bills of Lading Act. But this can hardly be intended to require the carrier to take precautions with goods which the owner himself deems it unnecessary or undesirable to take. The owners were equally aware of the danger of freezing, anticipated it, yet relied upon chance by their failure to put a stove in the car."

Limited Liability Clause — Liability for Delay.

A stipulation in a bill of lading construed as releasing the liability of the carrier for mere delay in transportation is reasonable and valid where the shipper receives as consideration therefor a material reduction in the rate of transportation. American Locomotive Co. v. New York Cent. R. Co., (1920) 190 App. Div. 372, 179 N. Y. S. 851 (no reference to Uniform Act—intrastate shipment).

Limited Liability Clause — Liability for Care of Live Stock.

It has been held, without reference to the Uniform Act, that a carrier has no power to limit its liability with respect to the safe delivery of live stock at the place to which it is consigned. Moyers v. Illinois Cent. R. Co., (1915) 197 Ill. App. 179 (intrastate shipment — carrier attempted to limit its liability to gross negligence).

So a provision in a live stock shipping contract that the shipper agrees " to assume all risk of injury or damage to or escape of the live stock which may happen to it while in the stockyards of the railway company awaiting shipment " is void so far as it is intended to relieve the railroad company from liability for negligence. Akeman v. Wabash R. Co., (Mo. App. 1918) 201 S. W. 590 (no reference to Uniform Act; shipment apparently intrastate).

It would seem that the inhibition of section 3 against the insertion of terms which are " contrary to law " would invalidate a condition infringing another independent statute. Thus it has been held, in a case coming within the purview of the Uniform Act, but without any reference to that act, that under a statute forbidding any contract whereby the liability of a common carrier is diminished a clause in a live stock shipping contract whereby the shipper assumes all risk of caring for the cattle is invalid. Cravens v. Hines, (Mo. App. 1920) 218 S. W. 912 (intrastate shipment).

Limited Liability Clause — Liability for Act or Fault of Shipper.

A provision in a bill of lading relieving the carrier from liability where the loss occurs by reason of " the act or fault of the shipper " is a mere declaration of one of the exceptions to the carrier's common-law liability as insurer, and the burden is on the carrier to show that a loss was within the exception. Atlantic Refining Co. v. Pennsylvania R. Co., (1921)— Pa. St.—, 113 Atl. 570 (no reference to Uniform Act — character of shipment not revealed).

Limited Liability Clause — General Exemption from Liability.

A provision in an express receipt for money to be transferred by cable to a foreign country exonerating the carrier " for any loss occasioned by errors or delays * * * or for the acts or omissions of the correspondents or agencies necessarily employed * * * in the transfer of this money, all risks for which are assumed by the sender " will be upheld where it appears that the sender signed the agreement and that the carrier had neither actual nor constructive knowledge that the sender could not read English, and there is no claim that the signature of the sender was procured by fraud or by misrepresentation and concealment of the terms of the agreement. Alemian v. American Express Co., (1921)— Mass.—, 130 N. E. 253 (no reference to Uniform Act — character of shipment ignored).

Stipulation Contrary to Fact.

In issuing a bill of lading a carrier must issue it according to the facts; and a shipper is not bound to accept a bill of lading with a notation on it that the goods are in a damaged condition when received, when such statement is not warranted by the facts. Dobbins v. Delaware, etc., R. Co., (1917) 177 App. Div. 132, 163 N. Y. S. 849 (no reference to Uniform Act — intrastate shipment).

Stipulation as to Measure of Damages.

It has been said, apparently by way of dictum, that under section 10 of the Uniform Act a condition attached to a bill of lading to the effect that the liability for loss shall be measured by the value of the goods at the place of shipment is valid and binding. Shellabarger Elevator Co. v. Illinois Cent. R. Co., (1917) 212 Ill. App. 1.

In New England News Co. v. Metropolitan Steamship Co.,

(1913) 215 Mass. 252, 102 N. E. 423, the court, without reference to the Uniform Act, assumed the validity of a similar provision, the shipment being in fact an interstate one.

Stipulation as to Freight Charges.

A provision in a bill of lading stipulating that the carrier shall collect the freight charges from the consignee is valid. King v. Van Slack, (1916) 193 Mich. 105, 159 N. W. 157 (no reference to Uniform Act — interstate character of shipment ignored).

Cross-Reference.

For cases discussing the binding effect of a stipulation in a contract of shipment as dependent on the shipper's knowledge thereof or assent thereto, see the "Case Notes" under section 10, infra.

§ 4. Definition of non-negotiable or straight bill.—A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill.

COMMISSIONERS' NOTE.

See note to the following section.

STATUTORY NOTES.

Section 2 of the **Federal** act is identical with this section except for the omission of the adjective "non-negotiable," and it is to be observed that the Federal act uniformly uses the expression "straight bill" instead of "non-negotiable bill."— See Appendix.

The **North Carolina** act follows the Federal act in the phraseology of this section and also in the general use of the expression "straight bill" instead of "non-negotiable bill."— See Laws 1919, ch. 65.

CASE NOTES.

Effect of Insertion of "or Assigns."

A bill of lading in which it is stated that the goods are consigned to a specified person "or assigns" is nevertheless a non-negotiable or straight bill, the quoted words not adding anything which changes or qualifies the effect of the specific designation of the consignee. Gubelman v. Panama R. Co., (1920) 192 App. Div. 165, 182 N. Y. S. 403; Goldstein v. Societa Veneziana, etc., (1920) 193 App. Div. 168, 183 N. Y. S. 460.

§ 5. Definition of negotiable or order bill.—A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that it is non-negotiable shall not affect its negotiability within the meaning of this act.

COMMISSIONERS' NOTE.

This act makes a fundamental distinction throughout between negotiable and non-negotiable bills. The former are the negotiable representatives of the goods, the latter merely evidence of the contract between the shipper and carrier. This distinction is clearly recognized in mercantile usage and by much legislation. To some extent it is also recognized by the courts independently of legislation. Negotiable bills are frequently called "order" bills.

STATUTORY NOTES.

Section 3 of the **Federal** act contains the first paragraph of this section in identical terms except for the omission of the adjective "negotiable," and it is to be observed that the Federal act uniformly uses the expression "order bill" instead of "negotiable bill." The second paragraph is modified in the Federal act to read as follows: "Any provision in such a bill or in any notice, contract, rule, regulation, or tariff that it is non-negotiable shall be null and void and shall not affect its negotiability within the meaning of this Act unless upon its face and in writing agreed to by the shipper."—See Appendix.

The **Massachusetts** act was amended in 1918 so as to make the second paragraph of this section read as follows: "Any provision in such a bill that it is non-negotiable shall be void."—See Laws 1918, ch. 257, § 284.

The **North Carolina** act follows the Federal act in the phraseology of this section and also in the general use of the expression "order bill" instead of "negotiable bill."—See Laws 1919, ch. 65.

§ 6. Negotiable bills must not be issued in sets.—Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets.

If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

COMMISSIONERS' NOTE.

The issue of bills of lading in parts has often been condemned. It is a direct invitation to fraud in the case of negotiable bills, for one part is as much an original as another. Moreover, it is impossible to guard against the fraud, for it has been held that one who has contracted to buy goods and pay the price on transfer of the bill of lading must pay on having one of a set tendered him. He cannot demand all (Sanders v. McLean, (1883) 11 Q. B. D. (Eng.) 327), though by so doing alone can he be protected, for the carrier may deliver without liability to the holder who first presents a part. Glyn v. East, etc., India Dock Co., (1882) 7 App. Cas. (Eng.) 591.

Owing to the fixed practice of international carriers in regard to this matter, it has been thought more conservative to confine the requirements of this section to carriage within the United States.

STATUTORY NOTES.

Section 4 of the **Federal** act contains this section in practically identical terms, the only material change being the insertion of the words "and Panama" after the word "Alaska." The Federal act also adds the following proviso: "Provided, however, That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing."—See Appendix.

The **Alaska** act substitutes the word "territory" in this section for the word "state" and omits the words "except Alaska."—See Laws 1913, ch. 59.

The **Maine** act substitutes the word "therein" in this section for the words "to any place in the United States on the continent of North America, except Alaska."—See Laws 1917, ch. 132.

The **Minnesota** act omits from this section the words "to any place in the United States on the continent of North America,

except Alaska."—See Laws 1917, ch. 399. These words were omitted from section 6 and also from section 7 " to avoid conflicting with the Federal act in terms applying to interstate commerce."—See pamphlet on Uniform Commercial Acts of Minnesota, by S. R. Child and Donald E. Bridgman.

The **North Carolina** act changes the first paragraph of this section to read as follows: " Order bills issued in North Carolina for transportation of goods from one point to another in North Carolina shall not be issued in parts or sets."—See Laws 1919, ch. 65.

§ 7. Duplicate negotiable bills must be so marked.—When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word " duplicate " or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

COMMISSIONERS' NOTE.

The use of duplicate bills is common, and it is obvious that they should be so marked to avoid fraud or mistake. See Midland Nat. Bank v. Missouri Pac. R. Co., (1895) 132 Mo. 492, 33 S. W. 521, 53 A. S. R. 505.

STATUTORY NOTES.

Section 5 of the **Federal** act contains this section in practically identical terms, the only material change being the insertion of the words " and Panama " after the word "Alaska." The Federal act also adds the following proviso: " Provided, however, That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word ' duplicate ' thereon, or to impose the liabilities set forth in this section for failure so to do." See **Appendix.**

The **Alaska** act substitutes the word " territory " in this section for the word " state " and omits the words " except Alaska." — See Laws 1913, ch. 59.

The **Maine** act substitutes the words " within the state " in this section for the words " in the United States on the continent of North America, except Alaska."— See Laws 1917, ch. 132.

The **Minnesota** act omits from this section the words " to any place in the United States on the continent of North America, except Alaska."— See Laws 1917, ch. 399. For an explanation of the omission, see " Statutory Notes " under section 6.

The **North Carolina** act changes the first part of this section to read " when more than one order bill is issued in North Carolina for the same goods to be transported to any place in North Carolina." The phrase " the word ' duplicate ' " is omitted, manifestly by inadvertence.— See Laws 1919, ch. 65.

CASE NOTES.

Conversion by Owner After Transfer of Duplicate Bill.

Where triplicate negotiable bills of lading are issued for a single shipment of goods and the owner of the goods transfers the title thereto by the indorsement and delivery of one bill of lading, the act of the owner in obtaining the goods from the carrier by means of another of the three bills constitutes a conversion for which the owner is liable to a subsequent transferee of the first bill. And it is not material in such a case that the goods are obtained from the carrier prior to the negotiation of the first bill to a subsequent transferee. Roland M. Baker Co. v. Brown, (1913) 214 Mass. 196, 100 N. E. 1025.

§ 8. Non-negotiable bills shall be so marked.—A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it " non-negotiable " or " not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

COMMISSIONERS' NOTE.

By the statutes of several states the carrier must require the surrender of all bills except those marked " not negotiable."

It seems desirable that a bill of lading should indicate very clearly on its face whether it is a negotiable or non-negotiable bill,

in view of the marked differences in the legal effect of the two documents. Section 50 provides a criminal penalty for failure to observe this requirement.

STATUTORY NOTES.

Section 6 of the **Federal** act is practically identical with this section.— See Appendix.

CASE NOTES.

Effect of Failure to Mark.

The failure to mark a bill " non-negotiable " as required by this section, does not change its character and render it negotiable, but makes the person who, with intent to defraud, issues or aids in the issuing of such a bill, guilty of a crime (see section 50). Gubelman v. Panama R. Co., (1920) 192 App. Div. 165, 182 N. Y. S. 403.

§ 9. Insertion of name of person to be notified. The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

COMMISSIONERS' NOTE.

This section is adopted with slight changes in wording from House Bill 15,846 of the 1st session of the 59th Congress. The practice is common for a shipper of goods to take a bill to his own order that he may obtain the discount of a draft for the price, inserting also in the bill a request that the carrier notify the prospective buyer of the arrival of the goods, so that the latter may promptly pay the price, get the bill of lading, and remove the goods. Banks sometimes fear to discount a draft for the consignor when such a provision is inserted, questioning whether the prospective purchaser of the goods may not have a better right than one who buys the bill of lading either outright or as security.

As the person to be notified may not have even a contract right against the consignor, it seems best to remove any doubt as to the rights of one who purchases or lends money on such a bill.

STATUTORY NOTES.

Section 7 of the **Federal** act is practically identical with this section.— See Appendix.

CASE NOTES.

Title of Person to Be Notified.

The person to be notified of a shipment of goods acquires no title thereto without payment of the draft to which the bill of lading is attached. South Deerfield Onion Storage Co. v. New York, etc., R. Co., (1916) 222 Mass. 535, 111 N. E. 367 (no reference to Uniform Act — interstate character of shipment ignored).

§ 10. Acceptance of bill indicates assent to its terms.— Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy.

COMMISSIONERS' NOTE.

This section deals with a question upon which there has been much litigation, and expresses the weight of authority, though there are many contrary decisions.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section. — See Appendix.

The **Illinois** act changes this section to read as follows: "Except as otherwise provided in this Act, where a consignor receives a bill and makes no objection as hereinafter provided to its terms or conditions, neither the consignor or any person who accepts delivery of the goods, or any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy: Provided, that any objection to the lawful terms and conditions of said bill shall be made in writing, which only need state the mere fact of such objection, by the consignor within three hours after receiving said bill and all such bills shall have attached to the same a blank form for such objection. Thereupon it shall be the duty of the officer, agent or servant of the carrier to take up said bill of lading so objected to, and upon

request of such officer, agent or servant, it shall be the duty of the consignor to surrender such bill of lading and thereupon such officer, agent or servant shall issue an unconditional bill under which consignor shall pay the lawful freight rate."— See Laws 1911, p. 227.

The **Minnesota** act changes this section to read as follows: "Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, this shall be prima facie evidence that he assents to its terms in so far as they are in accordance with law and public policy."— See Laws 1917, ch. 399.

The **North Carolina** act omits this section.— See Laws 1919, ch. 65.

CASE NOTES.

Generally.

As appears from the Commissioners' note, supra, the intent of this section is to settle a question which has given rise to much conflict in the decisions. Nevertheless, in all but one or two of the cases decided since the adoption of the Uniform Act in their respective jurisdictions, the courts have ignored the provisions of the act. However, it may be said that the decisions are with few exceptions in harmony with the rule announced in section 10.

The effect of the statute, at least with respect to the Illinois rule, has been stated as follows: "The Uniform Bill of Lading Act has not changed the rule as to the effect of such limitation of liability stipulations, but has changed the rule in regard to the proof of the making of the contract, or, in other words, of the assent of the shipper to the limitation stipulations. Formerly the carrier was bound to prove the shipper's knowledge of such stipulations limiting liability. and his assent thereto. Wabash R. Co. v. Thomas, (1905) 122 Ill. App. 569; Chicago, etc., R. Co. v. Calumet Stock Farm, (1901) 194 Ill. 9, 61 N. E. 1095, 88 A. S. R. 68; Cleveland, etc., R. Co. v. Patton, (1903) 203 Ill. 376, 67 N. E. 804. Now under the act referred to, when it is established that the shipper has received a bill of lading containing such stipulations and makes no objections thereto and particularly when he has signed the same, he is conclusively presumed to have known and assented to the same and is not allowed to deny that he is bound thereby." Bean v. Jackson, (1917) 207 Ill. App. 577.

Compare, however, the following Illinois cases, decided after the adoption of the Uniform Act but making no reference thereto

and affirming the necessity of showing assent by the shipper to restrictions in the contract of shipment on the carrier's liability: Mills v. Chicago, etc., R. Co., (1913) 183 Ill. App. 53 (live stock contract — character of shipment not revealed); Moyers v. Illinois Cent. R. Co., (1915) 197 Ill. App. 179 (live stock contract — intrastate shipment); Mitchell v. Frank Parmelee Co., (1918) 209 Ill. App. 428 (baggage receipt — intrastate shipment).

In accord with the rule declared in section 10, it has been held in several cases, without mention of the Uniform Act, that a provision in a shipping contract limiting the carrier's liability is, if valid on other grounds, binding on the shipper irrespective of whether it is read by him. Lichterman v. Barrett, (1916) 95 Misc. 594, 159 N. Y. S. 929 (express receipt — intrastate shipment); Barter v. Barrett, (1919) 186 App. Div. 715, 174 N. Y. S. 779, affirming (1917) 98 Misc. 646, 163 N. Y. S. 244 (express receipt — intrastate shipment).

See to the same effect: Secoulsky v. Oceanic Steam Nav. Co., (1916) 223 Mass. 465, 112 N. E. 151 (contract for shipment of baggage from foreign country — case decided in accordance with law of forum).

And although the fact emphasized is quite immaterial in view of the provisions of section 10, it has been held in a few cases, ignoring the Uniform Act, that especially will a shipper be presumed to have had notice of and to have assented to a limited liability clause in the contract of shipment where it appears that he prepared the contract himself, in accordance with his usual custom, using a blank form in his possession. Hanger v. Bloomington, etc., R. Co., (1915) 193 Ill. App. 475 (bill of lading — shipment apparently intrastate); Braus v. Manhattan Delivery Co., (1912) 78 Misc. 371, 138 N. Y. S. 324 (express receipt — character of shipment not revealed); Greenberg v. Rapid Delivery Express Co., (1917) 163 N. Y. S. 102 (express receipt — character of shipment not revealed).

However, it has been held, without reference to the Uniform Act, that a consignor by accepting from a baggage transfer company a check which is on its face a mere receipt and not a contract does not impliedly assent to a limitation of liability on the back thereof. Bennett v. Virginia Transfer Co., (1913) 80 Misc. 222, 140 N. Y. S. 1055 (shipment apparently intrastate), wherein the court said: "Where the limitation is contained in a receipt, and the consignor accepts the receipt without knowledge or notice

that it contains a contract of carriage, no special contract is accepted by him; on the other hand, where the consignor accepts a paper which he knows contains a contract of carriage, he impliedly agrees to all its terms, even though he does not read it. The test in all cases is, not whether the consignor read the limitation, but whether he knowingly entered into a special contract of carriage, and thereby impliedly agreed to all its terms."

Acceptance of Bill by Agent of Shipper.

Under section 10, a shipper whose authorized agent, acting within the limits of his authority, signs and accepts without objection a bill of lading for a shipment of goods, is bound by a provision therein limiting the liability of the carrier. Bean v. Jackson, (1917) 207 Ill. App. 577.

To the same effect are the following cases decided without reference to the Uniform Act: Johnson v. New York, etc., R. Co., (1914) 217 Mass. 203, 104 N. E. 445 (bill of lading — shipment apparently intrastate); Boynton v. American Express Co., (1915) 221 Mass. 237, 108 N. E. 942 (express receipt — interstate shipment, but case decided in accordance with law of forum).

And it has been held, again without reference to the Uniform Act, that even though the servant of a shipper who takes an express receipt containing a limitation of liability is unable to read, the shipper is chargeable with notice of the filed tariffs which constitute terms of the contract and having paid the minimum charge is entitled to recover only the minimum liability. Kolb v. Taylor, (1918) 102 Misc. 220, 168 N. Y. S. 685 (character of shipment not revealed).

But in a case wherein it appeared that the agent of a shipper was unable to read, that his illiteracy was brought home to the carrier's knowledge by the fact that he executed the bill of lading by making his mark, and that the carrier did not read or otherwise make known to him the contents of the bill, and there was no evidence that the bill of lading ever reached the shipper or the consignee, it was held without reference to the Uniform Act that a limitation of liability clause in the bill was not a part of the contract of shipment. McKinney v. Boston, etc., R. Co., (1914 217 Mass. 274, 104 N. E. 446 (intrastate shipment).

Parol Evidence to Vary Terms of Bill.

Where a shipment of goods is marked with the name and place of residence of the consignee, but a bill of lading is issued giving

an incorrect place of delivery, and the consignor makes no objection to the terms of the bill, the carrier has the right, no fraud or evidence of the making of a previous agreement appearing, to rely on the bill of lading as expressing the entire contract, which cannot be varied by oral testimony. Porter v. Oceanic Steamship Co., (1916) 223 Mass. 224, 111 N. E. 864.

But the rule that a bill of lading, so far as it embodies the terms of the contract, cannot be varied by parol evidence, rests on the assumption, it has been held, that the bill is received and accepted as such by the one bound thereby and at the time of the shipment. Hence a carrier which enters into an oral contract of shipment cannot afterwards issue a bill of lading containing different terms, without the consent or knowledge of the shipper, and then insist that the bill of lading is the contract. John Vittucci Co. v. Canadian Pac. R. Co., (1918) 102 Wash. 686, 174 Pac. 981 (no reference to Uniform Act — foreign shipment).

Cross-Reference.

Implied assent by a shipper to a stipulation in the shipping contract being conditioned by this section on the conformity of such stipulation to law and public policy, attention is directed to the " Case Notes " under section 3, supra, for decisions involving the validity of particular stipulations.

PART II.

Obligations and Rights of Carriers upon Their Bills of Lading.

§ 11. Obligation of carrier to deliver.—A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

COMMISSIONERS' NOTE.

See the definition of holder in section 53. The requirement of signature to an acknowledgment that the goods have been delivered is perhaps not the law aside from statute, but, as the usage is reasonable, it is adopted.

STATUTORY NOTES.

Section 8 of the **Federal** act is practically identical with this section, the only material change being the insertion of the words " Possession of the bill of lading and " at the beginning of clause (b).— See Appendix.

The **Connecticut** act omits the words " readiness and " before the word " willingness " in subdivision (c) of this section.— See Laws 1911, ch. 182.

The **Minnesota** and **North Carolina** acts, in conformity with the Federal act, insert the words " Possession of the bill of lading and " at the beginning of clause (b) of this section.— See Minn. Laws 1917, ch. 399; N. Car. Laws 1919, ch. 65.

CASE NOTES.

Burden of Proof on Refusal to Deliver Without Surrender of Bill.

In an action of replevin by a consignee against a carrier to recover goods which the carrier has refused to deliver on demand unaccompanied by a surrender of the order bill of lading, the burden is not on the carrier to show an excuse for its refusal to deliver, but the consignee has the burden of showing that the existing circumstances were such as to make it the duty of the carrier to deliver the goods without the surrender of the bill. Voghel v. New York, etc., R. Co., (1913) 216 Mass. 165, 103 N. E. 286.

Place of Delivery.

It has been held that a carrier was liable for failure to deliver goods on a certain track in a city, the destination named in the bill of lading, the consignee not being compelled to present the

bill of lading at another track in order to obtain a reconsignment to the track named. Scovern v. Chicago, etc., R. Co., (1914) 189 Ill. App. 126 (no reference to Uniform Act — interstate character of shipment ignored).

§ 12. Justification of carrier in delivering.—A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is:

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a non-negotiable bill for the goods, or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee.

COMMISSIONERS' NOTE.

This section gives the carrier a justification in some cases where he would not, under the preceding section, be bound to deliver, e. g., if a thief presented a negotiable bill properly indorsed, the carrier would be protected if he delivered the goods innocently.

STATUTORY NOTES.

Section 9 of the **Federal** act is practically identical with this section.— See Appendix.

CASE NOTES.

Cross-Reference.

The provisions of sections 12 and 13 being closely related, authorities pertinent to the common subject-matter of the two sections are brought together in the "Case Notes" under section 13.

§ 13. Carrier's liability for misdelivery.— Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and,

though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he:

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

COMMISSIONERS' NOTE.

This enacts the well-recognized law in regard to misdelivery generally, and also provides for the case where, owing to notice of the rights of others, a delivery of the goods to the consignee is wrongful. It is probable that the existing law warrants the whole section. See Southern Express Co. v. Dickson, (1876) 94 U. S. 549, 24 U. S. (L. ed.) 285, 6 Cyc. 468, et seq.

STATUTORY NOTES.

Section 10 of the **Federal** act is practically identical with this section.— See Appendix.

CASE NOTES.

What Law Governs.

In the case of an interstate shipment, the liability of a carrier for misdelivery is governed by the Federal Bills of Lading Act. Getchell v. Northern Pac. R. Co., (Wash. 1920) 187 Pac. 707. See also Dusal Chemical Co. v. Southern Pac. Co., (1918) 102 Misc. 222, 168 N. Y. S. 617.

Delivery of Shipment under Straight Bill.

In the absence of a notification to the carrier by the consignor, as provided by section 33, that a third person is the transferee of a straight bill of lading, the carrier may properly deliver the goods to the consignee without production of the bill. Dusal

Chemical Co. v. Southern Pac. Co., (1918) 102 Misc. 222, 168 N. Y. S. 617.

"A non-negotiable contract of shipment by a common carrier is discharged by delivery to the consignee without the surrender or production of the bill of lading. The fact that one is consignee is evidence of ownership." Edelstone v. Schimmel, (1919) 233 Mass. 45, 123 N. E. 333 (no reference to Uniform Act — interstate character of shipment ignored).

It has been said that possession of a non-negotiable bill of lading is not of much significance as to the title of the property. The carrier rightfully could deliver to the consignee and discharge its liability without surrender of such a bill. St. John Bros. Co. v. Falkson, (1921) — Mass.—, 130 N. E. 51 (no reference to Uniform Act — interstate character of shipment ignored).

It is a sufficient delivery to the consignee named in a non-negotiable bill of lading where the property is delivered at the place stipulated in the bill without the surrender of the bill. The carrier has the right, it has been said, to act on the basis that the consignee still holds the bill of lading and is the owner of the property until it is notified to the contrary. Bianchi v. Montpelier, etc., R. Co., (1918) 92 Vt. 319, 104 Atl. 144 (no reference to Uniform Act — interstate character of shipment ignored).

A carrier is not liable for delivering goods, without surrender of the bill, to the consignee named in a straight bill of lading, though the name of the consignee is followed by the words " or assigns," where it has received no notification from a transferee of the bill that delivery should not be made until advances made by him are paid. Gubelman v. Panama R. Co., (1920) 192 App. Div. 165, 182 N. Y. S. 403.

A carrier will not be liable for delivering goods to the consignee named in a straight bill of lading although the goods themselves are marked to be shipped to a person of the same name at another place, where the consignor has accepted the bill of lading without objection. Porter v. Ocean Steamship Co., (1916) 223 Mass. 224, 111 N. E. 864.

Delivery of Shipment under Order Bill.

The delivery of goods by a carrier to the consignee without the shipper's indorsement on the order bill of lading, in direct violation of its terms, amounts to a conversion and renders the carrier liable for the value of the property. Keystone Grape Co. v. Hustis, (1919) 232 Mass. 162, 122 N. E. 269 (citing § 11, subd. " b " of act).

Where goods are shipped under a shipper's order bill of lading and the carrier is notified by the shipper not to deliver them to the consignee without a written order signed by the shipper, a delivery contrary to such instructions is a violation of the duty of the carrier. J. L. Price Brokerage Co. v. Chicago, etc., R. Co., (1921) — Mo. App.—, 230 S. W. 374 (no reference to Uniform Act — interstate character of shipment ignored).

The doctrine that a carrier, when sued by the holder of a bill of lading for the value of freight received by the carrier for shipment, may show as an excuse for having delivered the freight without requiring the surrender or production of the bill of lading, that the person to whom the delivery was made on demand was the true owner, has no application to a case where the person to whom the freight was delivered was not the holder or owner of the bill of lading and had no right to receive the goods without the bill of lading. Harwood-Barley Mfg. Co. v. Illinois Cent. R. Co., (1917) 141 La. 1, 74 So. 569 (no reference to Uniform Act — interstate character of shipment ignored).

Where an order bill of lading calls for delivery at a certain point and the surrender of the bill before delivery, the carrier is not justified in unloading the goods at another point at the direction of the person to be notified of the shipment and without surrender of the bill of lading. Beggs v. New York Cent. R. Co., (1916) 97 Misc. 652, 162 N. Y. S. 387 (no reference to Uniform Act — interstate character of shipment ignored).

A carrier which delivers goods on the presentation of an order bill of lading cannot be held liable for conversion at the suit of the shipper because of any infirmity in the transaction whereby the buyer acquired the bill from a bank to which it had been intrusted by the shipper with a draft attached for collection. Midland Linseed Co. v. American Liquid Fireproofing Co., (1918) 183 Ia. 1046, 166 N. W. 573 (no reference to Uniform Act — interstate character of shipment ignored).

A carrier which receives goods consigned to the order of the shipper, with instructions to notify a certain person at destination, cannot relieve itself of its liability on the bill of lading to the shipper by taking an indemnity bond in lieu of the bill and delivering the goods to the person notified who is not entitled to receive them without producing and surrendering the bill of lading. Nor can the carrier plead as a defense to the main action on the bill of lading, defenses which the person notified may have, as purchaser, against the shipper. Harwood-Barley Mfg. Co. v.

Illinois Cent. R. Co., (1917) 141 La. 1, 74 So. 569 (no reference to Uniform Act — interstate character of shipment ignored).

While a carrier may waive a provision in an order bill of lading requiring the surrender of the same before delivery of the property, there can be no presumption indulged that it did so. Chicago, etc., R. Co. v. McElhany, (1917) 182 Ia. 1035, 165 N. W. 67 (no reference to Uniform Act — interstate character of shipment ignored).

A carrier is not liable to the consignor for delivering the goods to the buyer before surrender of the order bill of lading, so long as the bill is surrendered subsequently at a time when the buyer has title thereto; nor is it material that thereafter the buyer obtains the bill from the carrier for some purpose and that its physical possession is not thereafter restored to the carrier. Midland Linseed Co. v. American Liquid Fireproofing Co., (1918) 183 Ia. 1046, 166 N. W. 573 (no reference to Uniform Act — interstate character of shipment ignored).

A shipper who, with knowledge that the goods have been delivered by the carrier to the buyer before the surrender of the order bill of lading, retains a partial payment for the goods and demands payment of the balance of the purchase price from the buyer, thereby ratifies the delivery and is estopped to allege conversion of the goods by the carrier. Midland Linseed Co. v. American Liquid Fireproofing Co., (1918) 183 Ia. 1046, 166 N. W. 573 (no reference to Uniform Act — interstate character of shipment ignored).

Delivery of Diverted Shipment to Original Consignee.

Where a carrier is informed by the shipper of goods that he desires the shipment diverted, and on surrender of the bill of lading previously issued delivers to the shipper another bill naming a new consignee, a delivery by the carrier to the consignee named in the first bill constitutes a conversion of the property. Keota Produce Co. v. Chicago, etc. R. Co., (Ia. 1920) 179 N. W. 834 (no reference to Uniform Act — interstate character of shipment ignored).

§ 14. Negotiable bills must be cancelled when goods delivered.— Except as provided in Section 27, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation

of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto.

COMMISSIONERS' NOTE.

It is an obvious requirement of the mercantile use of negotiable bills of lading that the goods shall remain in the hands of the carrier as long as the bill is outstanding, and statutes similar in effect to this section are in force in some states. See also, as to warehouseman, Mohun, 2, 24, 355, 382, 538, 593.

The section does not apply to non-negotiable bills, because usage and mercantile necessity frequently require delivery in such cases without surrender of the receipt. See Forbes v. Boston, etc., R. Co., (1882) 133 Mass. 154; Litchfield Bank v. Elliott, (1901) 83 Minn. 469, 86 N. W. 454.

It is necessary to except compulsion by legal process, not only because in one case such compulsion is contemplated by this act (see section 43), but also because the compulsion may occur in a state which has not passed the act.

STATUTORY NOTES.

Section 11 of the **Federal** act is practically identical with this section.— See Appendix.

§ 15. Negotiable bills must be cancelled or marked when parts of goods delivered.— Except as provided in Section 27, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either:

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be

liable for failure to deliver all the goods specified in the bill, to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

COMMISSIONERS' NOTE.

This follows in regard to partial deliveries the rule of section 14.

STATUTORY NOTES.

Section 12 of the **Federal** act is practically identical with this section.— See Appendix.

§ 16. **Altered bills.**—Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

COMMISSIONERS' NOTE.

Alteration of a document transferring title to property, or indicating ownership, cannot destroy the vested title to the property. Wald's Pollock (3d ed.) p. 845, and cases cited. Accordingly, even though a bill is altered, the goods in the carrier's possession belong to the same person they did before alteration, and though it would be possible to hold that the carrier's only relation to the goods became that of a bailee, bound only to turn over the goods on demand, but not bound to fulfil the contract of carriage, this seems an inconvenient result. No hardship is imposed upon the carrier if he is required to fulfil his obligation to carry the goods to their destination on the terms originally agreed upon.

This section is taken in substance from a condition in the uniform bill of lading assented to by most carriers.

STATUTORY NOTES.

Section 13 of the **Federal** act is identical with this section.— See Appendix.

§ 17. Lost or destroyed bills.— Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

COMMISSIONERS' NOTE.

As in the case of all lost instruments (whether negotiable bills and notes or not) accidental destruction should not relieve the maker or diminish the rights of the holder. Accordingly the holder of a bill should be allowed to compel the delivery of the goods without surrender of the bill. This relief, however, can be given only under equitable conditions. The carrier cannot be required to increase its risk because of the holder's carelessness or accident. Accordingly, a sufficient bond is required. The carrier will still remain liable on the original bill of lading if it should turn up in the hands of a bona fide purchaser, under section 14, but will be able to recoup his liability against the bondsmen. As this draft imposes no penalty upon the carrier for failure to take up a negotiable bill of lading on delivery of the goods, other than making the carrier liable on such a bill which it has not taken up, there is nothing to prevent the carrier from making such arrangement as it deems satisfactory with the holder of a lost or destroyed bill, without requiring the legal proceeding provided for in this section.

STATUTORY NOTES.

Section 14 of the **Federal** act contains this section in practically identical terms, the only material change being the insertion of the word "stolen" after the word "lost" and the word

" theft " after the word " loss " in the first part of the section. The Federal act also adds the following proviso to the first paragraph: " Provided, a voluntary indemnifying bond without order of court shall be binding on the parties thereto." — See Appendix.

The **Minnesota** and **North Carolina** acts follow the Federal act in the phraseology of this section.— See Minn. Laws 1917, ch. 399; N. Car. Laws 1919, ch. 65.

CASE NOTES.

Bill as " Lost " When Consignee Unable to Get Possession.

It has been said that a consignee who claims the right to receive the goods from the carrier but is unable to get possession of the bill of lading might proceed under section 17 of the act, since in such a case, as between the consignee and the carrier, the bill would be " lost " within the meaning of the statute. Voghel v. New York, etc., R. Co., (1913) 216 Mass. 165, 103 N. E. 286.

§ 18. Effect of duplicate bills.—A bill upon the face of which the word " duplicate " or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

COMMISSIONERS' NOTE.

Duplicate bills of lading seem to have been somewhat confused by some courts, and perhaps by some business men, with bills of lading issued in sets, in which each part is an original. Banks appear sometimes to lend money on duplicate bills, and in Batavia First Nat. Bank v. Ege, (1888) 109 N. Y. 120, 16 N. E. 317, 4 A. S. R. 431, at least the court seemed to treat the duplicate as if it were as good as the original. In Shaw v. North Pennsylvania R. Co., (1879) 101 U. S. 557, 25 U. S. (L. ed.) 892, the duplicate was treated as of no more value than a copy. See also Midland Nat. Bank v. Missouri Pac. R. Co., (1895) 132 Mo. 492, 33 S. W. 521, 53 A. S. R. 505.

It is obvious that two separate bills representing the goods cannot be permitted. The duplicate, therefore, must not represent

the goods. It should, however, be conclusive upon the carrier that there is an original of the same tenor.

STATUTORY NOTES.

Section 15 of the **Federal** act is identical with this section.—See Appendix.

§ 19. Carrier cannot set up title in himself.— No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

COMMISSIONERS' NOTE.

This states the common law as to bailees generally. 3 Am. & Eng. Encyc. of Law, 759.

STATUTORY NOTES.

Section 16 of the **Federal** act is identical with this section.—See Appendix.

§ 20. Interpleader of adverse claimants.— If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate.

COMMISSIONERS' NOTE.

The case of Crawshay v. Thornton, (1837) 2 Myl. & C. 1, 40 Eng. (Reprint) Rep. 541, unfortunately held that interpleader was not a proper remedy in such a case. It is, however, the only adequate remedy, and is probably generally allowed in this country. 3 Am. & Eng. Encyc. of Law, 762.

STATUTORY NOTES.

Section 17 of the **Federal** act is identical with this section.—See Appendix.

§ 21. Carrier has reasonable time to determine validity of claims.— If some one other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

COMMISSIONERS' NOTE.

It seems obviously proper that the carrier should be protected for such brief period as may be necessary to enable him to determine the rights of the claimants.

STATUTORY NOTES.

Section 18 of the **Federal** act is identical with this section.— See Appendix.

§ 22. Adverse title is no defense, except as above provided.— Except as provided in the two preceding sections and in section 12, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand.

COMMISSIONERS' NOTE.

Except as qualified by the preceding sections, the common-law doctrine is here stated that a bailee cannot set up the title of a third person as an excuse for failure to deliver goods. See 3 Am. & Eng. Encyc. of Law, 758.

STATUTORY NOTES.

Section 19 of the **Federal** act is practically identical with this section.— See Appendix.

§ 23. Liability for non-receipt or misdescription of goods.— If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to:

(a) The consignee named in a non-negotiable bill, or

(b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill.

COMMISSIONERS' NOTE.

This section, perhaps, imposes on the carrier a stricter rule than that generally in force in this country in that it makes a carrier liable for an innocent misdescription of the goods. See Hale v. Milwaukee Dock Co., (1868) 23 Wisc. 276, 99 Am. Dec. 169.

But as the carrier can readily protect himself by inserting in the bill only what he knows, namely, the marks on the packages or the statements of the shipper regarding them, it seems best to make the carrier responsible for what he asserts. The section also charges the carrier for the improper conduct of an employee in issuing a bill when goods have not been received. The weight of authority apart from statute has freed the carrier from liability on the ground that the employee had no authority to issue a bill under these circumstances. But much fault has justly been found with this rule and in some states it has been changed by statute.

STATUTORY NOTES.

The **Federal** act substitutes for this section three sections differing considerably from the phraseology of the Uniform Act. Section 22 of the Federal act corresponds with the first part of section 23 of the Uniform Act and provides as follows: "If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several states and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue."—See Appendix.

Sections 20 and 21 of the Federal act correspond with the last paragraph of section 23 of the Uniform Act. Section 20 deals with the loading of goods by the carrier and provides as follows: "When goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity of bulk freight, and such carrier shall not, in such case, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, 'Shipper's weight, load, and count,' or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein." Section 21 deals with the loading of

goods by the shipper and provides as follows: " When package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words ' Shipper's weight, load and count,' or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill of lading: Provided, however, Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words ' Shipper's weight,' or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein." — See Appendix.

The **California** act substitutes the following for the last sentence in this section: " All carriers must issue to shippers of carload freight from agency stations a clean bill of lading at the request of the shipper and in such cases shall discontinue the practice of noting on bill of lading ' Shipper's load and count.' Upon request of shipper of carload freight from a non-agency station, the carrier shall send a man to check the loading and shall issue a clean bill of lading, the expense, except transportation of man to and from point of loading to perform service of checking, to be borne by the shipper." — See Laws 1919, ch. 365.

The **Minnesota** act changes subdivision (a) of this section to read " the owner of goods covered by a non-negotiable bill subject to existing right of stoppage in transitu," and omits the words " or a connecting carrier " from the fourth paragraph. These changes correspond to changes in section 23 of the Uniform Act made by section 22 of the Federal act. The last paragraph of section 23 of the Minnesota act is practically identical with section 21 of the Federal act (supra). The Minnesota act also adds a section known as " 23A" which is practically identical with section 20 of the Federal act (supra).— See Laws 1917, ch. 399.

The **North Carolina** act follows the Federal act in changing this section of the Uniform Act, sections 20, 21 and 22 of the North Carolina act being practically identical with sections 20, 21 and 22 of the Federal act (supra).— See Laws 1919, ch. 65.

CASE NOTES.

Bill Fraudulently Issued for Goods Not Received.

Under this section, it is no defense to a carrier, for failure to deliver to the holder in good faith of a negotiable bill of lading the goods represented thereby, that the goods were never received by it and that the agent of the carrier who issued the bill was induced to do so by the fraud and misrepresentation of the consignor. Mid-City Trust, etc., Bank v. Chicago, etc., R. Co., (1915) 192 Ill. App. 225, wherein the court said: " It is to be noted that defendant's allegation that its agent ' acted outside the scope of his authority in executing said bill of lading,' does not negative the fact that he was acting within the scope of his actual or apparent authority to issue bills of lading. The conditions which may relieve the carrier from liability are stated in this section of the statute thus: ' The carrier may, also, by inserting in the bill the words " shipper's load and count " or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper non-loading or by the non-receipt or by the misdescription of the goods described in the bill.' Regarding the words on the bill of lading before us, ' Shippers' L. C. & Tally,' as indicating facts which would relieve the carrier from liability, it should be noted that the exculpatory result is conditioned not only on the presence of such words

but also on the fact that they must 'be true.' Obviously there can be no 'shipper's load and count' where no goods whatever were received, and this, defendant claims to be the fact. The statutory words 'by the non-receipt' must refer to a situation where there was in fact a loading and tally of goods by the shipper but subsequently a shortage is found; to make them applicable to a case where no goods whatever were received would make them inconsistent with the fact of goods loaded and counted by the shipper."

Bill Issued in Exchange for Forged Bill.

A carrier is liable under this section to a purchaser in good faith for value, without notice of the circumstances, of a bill of lading issued by the general freight agent of the carrier in exchange for a forged bill of lading purporting to represent goods never actually received by the carrier. Chas. W. Johnson Lumber Co. v. Great Northern R. Co., (1918) 104 Wash. 354, 176 Pac. 343, 181 Pac. 932.

Use of Initials "S. L. & C."

The provision of this section for inserting the words "shipper's load and count" is not complied with by printing on the bill of lading the letters "S. L. & C." in the absence of a course of dealing whereby the meaning of the initials has to the knowledge of both parties become fixed. Fenderson v. Lehigh Valley R. Co., (1914) 163 App. Div. 107, 148 N. Y. S. 494.

Statement that Goods Are in "Apparent Good Order."

A recital in a bill of lading that the goods were received by the carrier in apparent good order, is prima facie evidence of the fact that the goods were in good order when received so far as their good order was apparent; and where the goods are of such a character that it could be ascertained by mere inspection whether they were in sound condition, the clause "contents and condition of contents of packages unknown" is not applicable. Sprotte v. Delaware, etc., R. Co., (1917) 90 N. J. L. 720, 101 Atl. 518 (no reference to Uniform Act — interstate character of shipment ignored).

Where a shipper loads the goods and the carrier merely issues its "uniform bill of lading" without making any special examination, the mere formal declaration of the bill that the goods are received in "apparent good order" does not call on the carrier

to establish the contrary or to assume the burden of showing its freedom from negligence. Orunsten v. New York Cent. R. Co., (1917) 179 App. Div. 465, 165 N. Y. S. 996 (no reference to Uniform Act — intrastate shipment).

Nor does such a clause in the shipping receipt relieve the consignee of the burden of showing the carrier's liability for goods lost from the shipment. Wallens v. New York Cent., etc., R. Co., (1917) 166 N. Y. S. 1083 (no reference to Uniform Act — intrastate shipment).

Bill of Lading as Admission of Receipt of Contents of Package.

An unqualified admission in a bill of lading that the carrier has received " one case clo. (clothes)," is not an admission that there has been received a certain number of specific articles of clothing of certain value and for which on nondelivery recovery can be had. Dworkwitz v. New York Cent. R. Co., (1920) — N. Y.—, 129 N. E., 650, reversing 187 App. Div. 906, 173 N. Y. S. 654 (no reference to Uniform Act — intrastate shipment).

Nor does such an admission, when coupled with a statement expressly disclaiming knowledge by the carrier of the actual contents of the package, amount to an admission of the receipt of any specified goods. Dworkwitz v. New York Cent. R. Co., supra.

§ 24. Attachment or levy upon goods for which a negotiable bill has been issued.— If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

COMMISSIONERS' NOTE.

If the mercantile theory of documents of title, such as bills of lading and warehouse receipts, were carried to its logical

extent, no attachment of the goods represented by the document or levy upon them could be permitted while the negotiable document was outstanding. For the mercantile theory proceeds upon the assumption that a negotiable document of title represents the goods and may be safely dealt with on that assumption. For one and the same reason the law cannot permit the bailee to deliver the goods without taking up an outstanding negotiable receipt for them, or allow attachment or levy upon the goods, when they are represented by outstanding negotiable documents. For a similar reason the maker of negotiable notes is protected from garnishment, in most states by absolutely disallowing such garnishment and in other states by making any garnishment subject to the rights of even a subsequent purchaser for value before maturity of the paper. Likewise by statute in some states an attachment of stock is postponed to a subsequent purchaser of the stock certificate. Clews v. Friedman, (1903) 182 Mass. 555, 66 N. E. 201. So in the case of carriers, some protection against garnishment has been given. In most states, if the goods are actually in transit the carrier cannot be garnished. 14 Am. & Eng. Encyc. of Law, 810. A transfer of a bill of lading prevails over a subsequent attachment. Mather v. Gordon, (1904) 77 Conn. 341, 59 Atl. 424; Robert C. White Live Stock Commission Co. v. Chicago, etc., R. Co., (1901) 87 Mo. App. 330; Union Nat. Bank v. Rowan, (1885) 23 S. C. 339, 55 Am. Rep. 26; and in Peters v. Elliott, (1875) 78 Ill. 321, it was held that an attaching creditor of a consignor was postponed to one who bought the bill of lading subsequently.

It was thought best in this act not to take the extreme position that no attachment, garnishment or levy could be made on property for which a negotiable bill was outstanding, but to cover the essential practical point by making it a condition of the validity of such seizure that the negotiation of the bill be enjoined or the document impounded. The following section expressly gives the court full power to aid, by injunction and otherwise, a creditor seeking to get at a negotiable bill and the property covered thereby.

Statutory Notes.

Section 23 of the **Federal** act is practically identical with this section.— See Appendix.

CASE NOTES.

Interstate Shipment.

This section applies to interstate shipments. Stamford Rolling Mills Co. v. Erie R. Co., (1917) 257 Pa. St. 507, 101 Atl. 823, wherein the court said: "There is no merit in the suggestion that, as this was an interstate shipment, the effect to be given to the bill of lading is a question of general law. Even if this were so, we do not know that it would make any difference. In the absence of a statute protecting the carrier under such circumstances, plain common sense would prevent the surrender of the goods under attachment while a negotiable bill of lading for them was outstanding, which might convey title to the goods to a third party. But the plaintiff in this case sought the aid of a state court, in pursuance of a purely statutory remedy, and is bound by the terms of the state law. As a matter of fact, no federal statute has been cited which gives to a creditor the right to a writ of foreign attachment. Moreover our Act of 1911 in no way interferes with interstate commerce. On the contrary, its effect is to prevent interference which might be attempted by attachment of goods in transit."

Goods Stopped in Transit.

The restriction in this section is not limited to goods in transit. The statute applies so long as the goods are "in the possession of the carrier," and hence the protection given by this section does not cease when the goods are stopped in transit. Stamford Rolling Mills Co. v. Erie R. Co., (1917) 257 Pa. St. 507, 101 Atl. 823, wherein the court said that the result would be the same even if the capacity in which the carrier held the goods was changed, by the stoppage in transit, to that of warehouseman, or of bailee generally, since the Warehouse Receipts Act and the Sales of Goods Act each contained provisions identical with section 24 of the Bills of Lading Act and would therefore continue the exemption.

Delivery to Carrier by Bailee.

Under this section and the corresponding section (23) of the Federal act, in order that goods shipped, for which an order bill of lading is issued by the carrier, shall be exempt from seizure or levy by judicial process until the bill is surrendered or impounded by the court, the person delivering the goods to the carrier must be one authorized to convey title thereto. Hence,

a mere bailee of goods, who contracts to perform work on them for a stipulated sum payable subsequent to their redelivery to the owner and who therefore has no possessory right to the goods under an artisan's lien, cannot, by shipping them to the owner under an order notify bill of lading with draft attached, exempt them from seizure under judicial process issued at the instance of the owner. Salant v. Pennsylvania R. Co., (1919) 188 App. Div. 851, 177 N. Y. S. 475.

Enjoining Negotiation of Bill in Foreign Jurisdiction.

Under sections 24 and 25 of the Uniform Act, and the corresponding sections (23, 24) of the Federal act, the court will not enjoin the negotiation of an order bill of lading where the holders of the bill and the bill itself are without the jurisdiction of the court. Brimberg v. Hartenfeld Bag Co., (1918) 89 N. J. Eq. 425, 105 Atl. 68, wherein the court said: " The purpose of the legislation undoubtedly was to protect goods in transit and in possession of a carrier against seizure until the carrier should be first liberated from liability and attack by the surrender of the order bill. The Legislature has made the bill the res rather than the goods. The term ' enjoined,' used by the Legislature, must imply effective restraint. It appears that the holders of the bill and the bill itself are without the jurisdiction of this court so that this court is without power to effectively enjoin negotiation. Application for such relief will have to be made either in the jurisdiction the bill or the holder is. If it appeared that attempts were being made in other jurisdictions to enjoin the negotiation of this bill, and application were made to this court for relief in aid of such proceedings, for instance, to enjoin the railroad company from delivering the goods except upon presentation and surrender of the order bill or to compel the railroad company to hold the goods a reasonable time to permit application to be made to the proper tribunals for relief, a different situation would be presented, and I express no opinion as to how it should be determined. While the paramount purpose of the provisions of the act referred to is to protect carriers and bona fide holders for value of order bills, yet the rights of creditors to relief against fraudulent practices is not to be overlooked. Where, as in this case, the goods are in one state, the order bill in another, and the alleged holder of the order bill in still another, it may well be that courts of equity acting in the three jurisdictions will simultaneously go so far as each may in

protecting the rights of creditors, although no one court may be able, without the aid of the others, to make a decree which will be effective as against all parties. The legislation is new, is an innovation upon the common law, and I think the court should go slow in construing it. In the case at bar, ample opportunity has been given to the complainant to institute proceedings in either the jurisdiction where the alleged holder of the order bill is, or the bill itself is, and no such proceedings have been instituted."

Equitable Attachment to Reach Bill Fraudulently Transferred.

Under this and the following section, it is only when the bill of lading is negotiable and is owned by the debtor that an injunction can be granted to enjoin the negotiation of the bill. Where the title to the bill is in another than the debtor, but it is claimed that the transfer of title from the debtor is fraudulent and void, there is open to the creditor aid from a court of appropriate jurisdiction by way of a bill of equitable attachment. Goldstein v. Societa Veneziana, etc., (1920) 193 App. Div. 168, 183 N. Y. S. 460.

Replevin by Owner of Goods.

It has been held by the Appellate Division of the New York Supreme Court, First Department, that there is no inhibition in this section or the corresponding section (23) of the Federal statute against replevin process issued at the instance of the lawful owner to recover the goods from the carrier. Salant v. Pennsylvania R. Co., (1919) 188 App. Div. 851, 177 N. Y. S. 475, wherein the court said: "The language of the statute is that the goods 'cannot thereafter, while in possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution.' Attachment and execution are issued against the goods of the owner, to hold for or to satisfy a debt of the owner in an action against the owner thereof; while replevin is an assertion by the owner of his right of possession of property wrongfully withheld. See Roberts v. Stuyvesant Safe Deposit Co., (1890) 123 N. Y. 57, 65, 67, 25 N. E. 294, 20 A. S. R. 718, 9 L. R. A. 438. In the instant case, the defendant incurs no risk of damages by the delivery of the goods, as the right of the true owner may be set up as a defense by the carrier where the property has been delivered up to him by the carrier, whether voluntarily

or pursuant to process in a suit instituted for that purpose." On this point, Smith, J., dissenting, said: "It is claimed that, because the expression is used 'by garnishment or otherwise,' the process there referred to is simply in the nature of an attachment in a proceeding brought, not by the owner, but by a creditor, in support of a right of action for moneys due. But the section also protects such property from levy by execution. If judgment be obtained in this replevin action, the only way to enforce it is by execution. Sections 1240, 1373, and 1731, Code of Civil Procedure. If, then, this property cannot be taken by execution in enforcement of the final judgment which this plaintiff seeks, it would be a strange anomaly to hold that it could be taken by mesne replevin process and thus held to no purpose. This fact gives significance to the expression of the statute that the goods cannot be attached by garnishment 'or otherwise.' The statute was passed to meet all phases of interference with the possession of the railroad company, through different states wherein different legal proceedings are applied to the impounding or attachment of property, so that the words 'or otherwise' are not necessarily interpreted by the word 'attachment,' as indicating like process."

An opinion contrary to the majority holding in the Salant case has also been given by one of the judges of the Municipal Court of New York City. See Salant v. Pennsylvania R. Co., (1917) 178 N. Y. S. 285, wherein only the Federal act was referred to.

Burden of Proof in Attachment.

Under this section, the burden of proof is on the attaching creditor to establish the facts necessary to maintain the attachment, i. e., that the negotiable bill has been surrendered, or that its negotiation has been enjoined. Stamford Rolling Mills Co. v. Erie R. Co., (1917) 257 Pa. St. 507, 101 Atl. 823.

§ 25. Creditor's remedies to reach negotiable bills.—A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

COMMISSIONERS' NOTE.

As the right of legal garnishment of bailed property is limited by section 24, the creditor is given by this section such rights as are included under the head of bills of equitable attachment or in aid of execution.

STATUTORY NOTES.

Section 24 of the **Federal** act is practically identical with this section.— See Appendix.

CASE NOTES.

Cross-Reference.

See "Case Notes" under section 24.

§ 26. Negotiable bill must state charges for which lien is claimed.— If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

COMMISSIONERS' NOTE.

This section is obviously requisite for the credit of negotiable bills, and is part of the general plan to make such bills indicate as clearly as possible on their face for what they stand.

STATUTORY NOTES.

Section 25 of the **Federal** act is practically identical with this section.— See Appendix.

CASE NOTES.

Liability for Freight Charges.

It has been said that if the assignee of a negotiable bill of lading should accept and remove the goods without paying the

charges, with knowledge that the carrier was giving up for his benefit a lien on the goods for a stated amount, that would be cogent evidence from which to imply an agreement on his part to pay the known amount of the freight charges; but that the mere acceptance and removal of goods by the assignee of a bill of lading on payment of the freight bill as made out by the carrier, without knowledge that the same is an undercharge, does not create any further liability on the part of the assignee, even though by mistake of the carrier the bill as rendered does not include the entire charge. Pennsylvania R. Co. v. Townsend, (1917) 90 N. J. L. 75, 100 Atl. 855.

§ 27. Effect of sale.—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable.

COMMISSIONERS' NOTE.

This section necessarily qualifies the right of a purchaser to a negotiable bill; such a purchaser may ordinarily assume that if the document was issued to the owner of goods and has been legally transferred to the purchaser, the latter will get a good title, but this assumption must be qualified by the chance referred to in this section. The age of the bill will, however, ordinarily give warning.

STATUTORY NOTES.

Section 26 of the **Federal** act is practically identical with this section, the only change worthy of note being the insertion of the word " themselves " after the words " failure to deliver the goods."—See Appendix.

The **Minnesota** and **North Carolina** acts follow the Federal act in the phraseology of this section.—See Minn. Laws 1917, ch. 399; N. Car. Laws 1919, ch. 65.

PART III.

Negotiation and Transfer of Bills.

§ 23. Negotiation of negotiable bills by delivery.—A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

COMMISSIONERS' NOTE.

This section should be read in connection with the following four sections. Thus, section 29 provides as to the method of negotiating order bills. Section 31 provides as to what persons may make effective negotiation, and section 32 provides what rights are acquired by a purchaser if such a person, as is described in section 31, negotiates the bill in the manner permitted by section 28 and 29. In allowing negotiation by delivery of a bill indorsed in blank, the draft follows the rule in regard to bills and notes, which is that also applied by mercantile usage to bills of lading.

STATUTORY NOTES.

Section 27 of the **Federal** act is practically identical with this section.—See Appendix.

CASE NOTES.

Necessity of Indorsement.

"A negotiable bill can only be effectively transferred by indorsement." Gubelman v. Panama R. Co., (1920) 192 App. Div. 165, 182 N. Y. S. 403 (citing sections 28, 29, and 34).

If a bill of lading is made out to the order of the shipper, it can be negotiated only by the indorsement of the shipper; and when indorsed in blank it can be negotiated by delivery and title to the goods will pass by such negotiation. Lamborn v. Lake Shore Banking, etc., Co., (1921) 188 N. Y. S. 162 (citing sections 28 and 31).

§ 29. Negotiation of negotiable bills by indorsement.—A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the

tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

COMMISSIONERS' NOTE.

As the preceding section adopted the rule of bills and notes as to negotiation by delivery, so this section similarly adopts a rule in regard to negotiation by indorsement.

STATUTORY NOTES.

Section 28 of the **Federal** act is practically identical with this section.— See Appendix.

§ 30. Transfer of bills.—A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A non-negotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right.

COMMISSIONERS' NOTE.

As provision is made in several sections for the negotiation of bills, so it is also provided what the effect is of the transfer of bills, including the transfer of non-negotiable bills and of negotiable bills without complying with such formalities as are necessary to make an effective negotiation of them. There is no section providing as to who may transfer a bill, corresponding to section 31 as to who may negotiate a bill, since under section 33, where a bill is transferred, but not negotiated, the transferee can in no case acquire a greater right than the transferor had. Whoever, therefore, transfers a bill, can give such a right and no more.

STATUTORY NOTES.

Section 29 of the **Federal** act is practically identical with this section, the only material change being the insertion of the words "free from existing equities" after the word "negotiated" in the second sentence.— See Appendix.

The Minnesota and North Carolina acts follow the Federal act in the phraseology of this section.—See Minn. Laws 1917, ch. 399; N. Car. Laws 1919, ch. 65.

§ 31. Who may negotiate a bill.—A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

COMMISSIONERS' NOTE.

This section and the following are of fundamental importance to the mercantile community. They state familiar law in regard to bills and notes, and there is authority for applying the same rules to bills of lading, both in the statutes making bills of lading negotiable and in decisions of courts recognizing mercantile custom. Commercial Bank v. J. K. Armsby Co., (1904) 120 Ga. 74, 47 S. E. 589, 65 L. R. A. 443; Pollard v. Reardon, (1895) 65 Fed. 848, 21 U. S. App. 639, 13 C. C. A. 171; Munroe v. Philadelphia Warehouse Co., (1896) 75 Fed. 545; Tiedeman v. Knox, (1880) 53 Md. 612; Hardie v. R. Co., (1907) 118 La. 253, 42 So. 793; Scheuermann v. Monarch Fruit Co., (March 1, 1909) 123 La. 55, 48 So. 647. For German law see Handelsgesetzbuch, §§ 363, 426, 442, 446–448. This section is also in harmony with the views expressed by the American Bar Association. See Vol. 33, Reports American Bar Association, pp. 24, 25 and 506, 507.

STATUTORY NOTES.

Section 30 of the **Federal** act is practically identical with this section.—See Appendix.

§ 32. Rights of person to whom a bill has been negotiated.—A person to whom a negotiable bill has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

COMMISSIONERS' NOTE.

Even more than the preceding section, this section raises sharply the issue between what may be called the mercantile theory of bills of lading and the common-law theory. The common-law theory may be stated in these words: The bill of lading is a symbol of the property. Delivery of the bill of lading has the same effect as delivery of the property, but as property may be delivered without transferring title and without estopping the owner from asserting his title against one who has bought in good faith from the possessor, so in case of a bill of lading the original owner of the goods may always show what the real nature of the transaction was, even against a bona fide purchaser. Merchants and bankers, on the other hand, regard the bill of lading as a representation of title as well as a symbol of possession. See the decisions cited in the note to the preceding section as to the mercantile theory, and compare recent expressions in The Carlos F. Roses, (1900) 177 U. S. 655, 665, 20 S. Ct. 803, 44 U. S. (L. ed.) 929; Washburn-Crosby Co. v. Boston, etc., R. Co., (1902) 180 Mass. 252, 257, 62 N. E. 590.

This act adopts the mercantile theory in providing that the person to whom the bill has been duly negotiated, acquires not only the title of the person who negotiated the bill, but also such title as the consignor and consignee had. That is, the purchaser may regard the form of the bill as a representation on the part of the consignor that the consignee was the owner of the goods.

Sub-section (b) provides that the person to whom the bill is negotiated shall succeed to the contract rights under the bill of lading as well as the property rights.

STATUTORY NOTES.

Section 31 of the **Federal** act is practically identical with this section.— See Appendix.

CASE NOTES.

Title of Bank Holding Draft with Bill of Lading Attached.

A bank which accepts, as collateral security for a note, a draft with bill of lading attached and indorsed in blank by the drawer,

becomes the holder in due course of the draft and takes title to the goods described in the bill of lading. Anderson v. Keystone Chemical Supply Co., (1920) 293 Ill. 468, 127 N. E. 668 (no reference to Uniform Act — interstate character of shipment ignored).

Likewise, it has been held that a pledge of a bill of lading to a bank to secure notes for moneys advanced creates rights in the bank in the nature of ownership for the purpose of securing its advances, and if the bank surrenders the bill of lading to the pledgor under a trust receipt, it may still assert its title as against the pledgor and his trustee in bankruptcy. Commercial Nat. Bank v. Canal-Louisiana Bank, etc. Co., (1916) 239 U. S. 520, 36 S. Ct. 194, 60 U. S. (L. ed.) 417, Ann. Cas. 1917E 25, reversing on other grounds (1914) 211 Fed. 337, 128 C. C. A. 16, which affirmed In re Dreuil, (1913) 205 Fed. 568.

So, a bank which discounts for a shipper a draft with a bill of lading attached, the proceeds being placed to the credit of the shipper in his commercial account, becomes a bona fide holder of the bill and is invested with title to the goods represented thereby. National Bank v. Bradley, (1920) 264 Fed. 700 (decided apparently under state law but with no reference to Uniform Act of either of states involved — interstate character of shipment ignored). See to the same effect Chicago, etc., R. Co. v. McElhany, (1917) 182 Ia. 1035, 165 N. W. 67 (no reference to Uniform Act — interstate character of shipment ignored); Peninsular Bank v. Citizens' Nat. Bank, (Ia. 1919) 172 N. W. 293 (no reference to Uniform Act — interstate character of shipment ignored); Allegan First Nat. Bank v. Grand Rapids, etc., R. Co., (1917) 195 Mich. 1, 161 N. W. 859 (no reference to Uniform Act — interstate character of shipment ignored).

And under such circumstances, it has been held, the bank may maintain conversion for the sale of the goods under an attachment issued in a suit against the shipper. Nat. Bank v. Bradley, supra.

But it has been held in New York that a bank receiving a draft with order bill of lading attached as one item of a deposit, the deposit slip containing a reservation to the effect that the draft is received for collection and the bank merely giving a bookkeeping credit therefor subject to cancellation if the draft is not paid, is not a bona fide holder of the draft or bill of lading, but a mere agent for collection. Blanchester First Nat. Bank

v. Stengel, (1918) 169 N. Y. S. 217, affirmed 185 App. Div. 906, 171 N. Y. S. 1085 (no reference to Uniform Act — character of shipment ignored).

However, the Washington Supreme Court has declared that it is immaterial whether a bank which purchases from a shipper a draft with order bill of lading attached, giving him credit in his private account for the full amount of the draft, becomes the owner of the bill of lading and the property represented thereby or whether it merely holds the bill and the property as collateral security for the payment of the draft. In either event the bank is the only one having a right to the bill until the amount it is entitled to receive is paid, and the carrier is liable to it for delivering the goods without the surrender of the bill. National Bank v. Hines, (Wash. 1920) 192 Pac. 899 (no reference to Uniform Act — interstate character of shipment ignored).

Where a bank which has purchased a bill of lading with draft attached sends the same to another bank with instructions not to deliver the bill of lading unless the draft is paid, the act of the receiving bank in delivering the bill, in violation of instructions, and thereby permitting the goods to be taken from the possession of their rightful owner, constitutes a conversion of the goods of which the bill of lading is a symbol, and the sending bank may recover damages therefor. Market State Bank v. Farmers' Sav. Bank (1921) — Ia.—, 181 N. W. 486 (no reference to Uniform Act — interstate character of shipment ignored).

Delivery of Bill as Constructive Delivery of Goods.

Where the consignee of goods refuses to accept them, and the shipper, for the purpose of procuring a reshipment of the goods, delivers to a connecting carrier an indorsed bill of lading, entitling the holder to receive the goods, such delivery is tantamount to a constructive delivery of the goods. Schlitten v. Hines, (1921) 186 N. Y. S. 831 (no reference to Uniform Act — interstate character of shipment ignored).

Right of Assignee of Bill to Enforce Contract Between Parties.

The assignment of a bill of lading carries with it control of the goods with the right to stipulate that the terms of the contract between the shipper and the consignee shall be complied with before delivery of the bill. State Bank v. Luff, (1921) — Pa.—, 112 Atl. 452 (no reference to Uniform Act — character of shipment not revealed).

§ 33. Rights of person to whom a bill has been transferred.—A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods.

COMMISSIONERS' NOTE.

So far as the non-negotiable bill is concerned, this section states the rights at common law of a purchaser of bailed goods. The purchaser. therefore, acquires nothing by the bill of lading except evidence. In case of a negotiable bill, the purchaser has the further right given by the next section.

STATUTORY NOTES.

Section 32 of the **Federal** act is practically identical with this section.—See Appendix.

The **Connecticut** act omits the words " of the carrier by the

transferor or transferee of a non-negotiable bill " after the word " notification " in the first clause of the second paragraph of this section.—See Laws 1911, ch. 182.

The **North Carolina** act, as originally enacted, contained two errors in this section which were corrected by a later statute.—See Laws 1919, ch. 65, as amended by Laws 1919, ch. 290.

CASE NOTES.

What Law Governs.

In the case of an interstate shipment, the question of the effect of the assignment of a non-negotiable bill of lading and the rights acquired by the assignee, is controlled by the Federal Bills of Lading Act. Quality Shingle Co. v. Old Oregon Lumber, etc., Co., (Wash. 1920) 187 Pac. 705.

Title of Bank Holding Draft with Bill of Lading Attached.

A bank which discounts for a consignor a draft with a non-negotiable bill of lading attached and gives the consignor credit for the face of the draft in his individual account with the bank, becomes the owner of the draft and as a collateral security thereto of the goods represented by the bill of lading. On payment of the draft, the proceeds are the property of the bank and cannot be attached in a suit by the drawer against the consignor. American Nat. Bank v. Warren, (1916) 96 Misc. 265, 160 N. Y. S. 413.

§ 34. Transfer of negotiable bill without indorsement.—Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

COMMISSIONERS' NOTE.

This follows the analogy of bills and notes. Crawford's Negotiable Instruments Law, § 79.

STATUTORY NOTES.

Section 33 of the **Federal** act is practically identical with this section.—See Appendix.

§ 35. Warranties on sale of bill.—A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

(a) That the bill is genuine,

(b) That he has a legal right to transfer it,

(c) That he has knowledge of no fact which would impair the validity or worth of the bill, and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim.

COMMISSIONERS' NOTE.

The clause in the first paragraph beginning "including" was inserted to avoid any possible misapprehension as to the scope of section 37.

This section except (d) follows the Negotiable Instruments Law, Crawford, § 115. (d) it is believed states the existing law.

STATUTORY NOTES.

Section 34 of the **Federal** act changes this section by omitting from the first paragraph the words "including one who assigns for value a claim secured by a bill," and also by omitting the last paragraph.—See Appendix.

The **North Carolina** act follows the Federal act in the phraseology of this section.—See Laws 1919, ch. 65.

§ 36. Indorser not a guarantor.—The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

COMMISSIONERS' NOTE.

Mercantile usage in regard to warehouse receipts and bills of lading differs from that in regard to bills and notes in the matter

to which this section relates. It states the existing law even where statutes have made warehouse receipts and bills of lading negotiable. Shaw v. North Pennsylvania R. Co., (1879) 101 U. S. 557, 25 U. S. (L. ed.) 892; Mida v. Geissmann, (1885) 17 Ill. App. 207.

STATUTORY NOTES.

Section 35 of the **Federal** act is identical with this section.—See Appendix.

§ 37. No warranty implied from accepting payment of a debt.—A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described.

COMMISSIONERS' NOTE.

There are several English decisions to the effect that the holder of a bill of exchange having a forged bill of lading as security is not liable to refund payment of the draft if he receives payment from the drawee. To the same effect are Hoffman v. National City Bank, (1870) 12 Wall. 181, 20 U. S. (L. ed.) 366; Goetz v. Kansas City Bank, (1887) 119 U. S. 551, 7 S. Ct. 318, 30 U. S. (L. ed.) 515; and see Daniel on Neg. Inst. §§ 174, 175.

In Landa v. Lattin, (1898) 19 Tex. Civ. App. 246, 46 S. W. 48, however, without referring to these authorities, the court went to the extreme length of holding that the holder of a bill of lading taken for security on the discount of a draft succeeded to all the liabilities of his transferor, the seller of the goods, and was to be regarded as warranting the quality of the goods to the same extent as the seller. This decision, though opposed to both authority and reason, was soon followed in Finch v. Gregg, (1900) 126 N. C. 176, 35 S. E. 251, 49 L. R. A. 679, and Searles v. Smith Grain Co., (1902) 80 Miss. 688, 32 So. 287. Contrary decisions, however, have been rendered in Tolerton, etc., Co. v. Anglo-California Bank, (1901) 112 Ia. 706, 84 N. W. 930, 50 L. R. A. 777; Hall v. Keller, (1902) 64 Kan. 211, 67 Pac. 518, 91 A. S. R. 209, 62 L. R. A. 758; German-American Bank v. Craig, (1903) 70 Neb.

41, 96 N. W. 1023; Leonhardt v. Small, (1906) 117 Tenn. 153, 96 S. W. 1051, 119 A. S. R. 994, 6 L. R. A. (N. S.) 887; and more recently Landa v. Lattin has been overruled in its own state (S. Blaisdell, Jr., Co. v. Citizens' Nat. Bank, (1903) 96 Tex. 626, 75 S. W. 292, 97 A. S. R. 944, 62 L. R. A. 968); and Finch v. Gregg, supra, has also been overruled (Mason v. A. E. Nelson Cotton Co., (1908) 148 N. C. 492, 62 S. E. 625, 128 A. S. R. 635, 18 L. R. A. (N.S.) 1121). Nevertheless the earlier Texas doctrine has been followed subsequently in Alabama. Haas v. Citizens' Bank, (1905) 144 Ala. 562, 39 So. 129, 113 A. S. R. 61, 1 L. R. A. (N. S.) 242.

STATUTORY NOTES.

Section 36 of the **Federal** act is identical with this section.—See Appendix.

CASE NOTES.

Liability of Bank on Implied Warranty.

A bank which purchases or discounts a draft with bill of lading attached is not, in the absence of bad faith, answerable to the drawee for the performance of the consignor's contract. Munson v. De Tamble Motors Co., (1914) 88 Conn. 415, 91 Atl. 531, L. R. A. 1915A 881 (no reference to Uniform Act — interstate character of shipment ignored); Williams v. National Fruit Exchange, (Conn. 1920) 111 Atl. 197 (no reference to Uniform Act — interstate character of shipment ignored); Market State Bank v. Farmers' Sav. Bank (1921) — Ia.—, 181 N. W. 486 (no reference to Uniform Act — interstate character of shipment ignored).

Thus, a drawee who has paid such a draft has no right of action against the bank for breach of warranty in the sale of the goods. American Nat. Bank v. Warren, (1916) 96 Misc. 265, 160 N. Y. S. 413.

But a bank may not invoke the protection of this rule where it has acted in bad faith, as by discounting the draft with knowledge that the goods were neither sound nor suitable for the purposes for which they were sold. Williams v. National Fruit Exchange, supra.

Nor does a bank, it has been held, come within the operation of the rule where, before shipment, it acquires title to the goods together with the draft by an absolute conveyance from the seller, and itself ships the property and undertakes to perform the seller's contract. Munson v. De Tamble Motors Co., supra.

§ 38. When negotiation not impaired by fraud, accident, mistake, duress or conversion.— The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.

COMMISSIONERS' NOTE.

This section merely elaborates for the sake of clearness certain cases within the terms of section 31.

STATUTORY NOTES.

Section 37 of the **Federal** act is practically identical with this section, the only material change being the insertion of the words "loss" and "theft" after the word "duress" each time the latter word is used.— See Appendix.

The **Louisiana** act, evidently by mistake, substitutes the word "obligation" for the word "negotiation" where the latter word is used the second time in this section.— See Laws 1912, act 94.

The **Minnesota** and **North Carolina** acts follow the Federal act in the phraseology of this section.— See Minn. Laws 1917, ch. 399; N. Car. Laws 1919, ch. 65.

CASE NOTES.

Negotiation in Violation of Terms of Trust Receipt.

One who purchases a negotiable bill of lading from the indorsee thereof, in good faith, for value, and without notice of the duty resting on the indorsee, acquires a good title thereto though the bill has been delivered to the indorsee for a specified purpose only, and his negotiation of it is in violation of the terms of a trust receipt executed by him. Roland M. Baker Co. v. Brown, (1913) 214 Mass. 196, 100 N. E. 1025, wherein the court said: "The effect of the statute has been to change fundamentally the rights of parties to transactions within its purview. In the present case, if the statute applies to it, when the defendants delivered their bill of lading to the Hide Company, with their

unconditional and unlimited indorsement thereon, they entrusted their property to the honesty of that company and relinquished their right to set up their title against any one who might in good faith, for value, and without notice of the duty which rested upon the Hide Company, purchase from that company the goods described in the bill and take from that company a delivery of the bill itself duly indorsed by it. The previous decisions of this court, by which the defendants were protected against the consequences of their agent's breach of duty, have been abrogated and nullified by the statute. As is said in Williston on Sales, § 437, the statute 'renders unsafe what has doubtless been a common practice of bankers who advance money on documents of title — the entrusting of the documents for a special purpose to the pledgor of them or the proposed buyer of the goods.'"

See also Commercial Nat. Bank v. Canal-Louisiana Bank, etc., Co., (1916) 239 U. S. 520, 36 S. Ct. 194, 60 U. S. (L. ed.) 417; Ann. Cas. 1917E 25.

And it has been held that a title so acquired may be effectually transferred even to one who has notice of the breach of duty on the part of the first indorsee. Roland M. Baker Co. v. Brown, (1913) 214 Mass. 196, 100 N. E. 1025.

§ 39. Subsequent negotiation.— Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

COMMISSIONERS' NOTE.

This is copied from section 25 (1) of the English Sale of Goods Act, where it applies to all sales of goods. It is of special importance in the case of negotiable documents of title.

STATUTORY NOTES.

Section 38 of the **Federal** act is practically identical with this section.— See Appendix.

§ 40. Form of the bill as indicating rights of buyer and seller.— Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

COMMISSIONERS' NOTE.

It has for centuries been recognized that the form of the bill of lading was evidence of intent on the part of the seller to transfer or retain title. If the seller names himself not only as consignor, but also as consignee of the goods, the carrier is bailee for him and is his agent, in holding possession. It is also a fair presumption that title remains in the seller, as he is entitled to possession. On the other hand, if the seller names the buyer as consignee, the contract of the carrier is to deliver to the buyer; the carrier's possession is, therefore, for the buyer and with the right to possession presumably title also goes. The rules stated in this section are believed to be in accordance with at least the presumptions recognized by existing law. The difficulty with the law as it now exists is, many courts seem disposed to say that an intention contrary to that which the form of the bill indicates, may be shown even as against third persons. See Sales Act, § 20.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section. — See Appendix.

The **North Carolina** act also omits this section.— See Laws 1919, ch. 65.

CASE NOTES.

Title of Consignee Named in Straight Bill.

Where goods are shipped through a carrier and a straight bill of lading is issued to the shipper, the consignee is prima facie the owner of the property. King v. Van Slack, (1910) 193 Mich. 105, 159 N. W. 157 (no reference to Uniform Act — interstate character of shipment ignored).

But this presumption, it has been held, may be overcome by proof of facts showing the actual transaction and the intent of the parties. Thus, in a case where the proof was conclusive that the contract between the shipper and the consignee called for delivery of the goods to the latter, the court held that the shipper was the owner until delivery and so could sue the carrier for injury to the goods before delivery. Ithaca Roller Mills v. Ann Arbor R. Co., (1917) 197 Mich. 440, 163 N. W. 934 (no reference to Uniform Act — intrastate shipment).

Somewhat similar in effect is a Pennsylvania case, wherein the court said: "In the absence of an agreement to the contrary

when a vendor sells goods to a vendee residing at a distance, a delivery of the goods to a carrier for transportation is a delivery to the purchaser. And especially is this true when a bill of lading naming the purchaser as consignee is transmitted to and received by the purchaser. The delivery to the carrier vests the title to the property in the purchaser, and the risks of transportation must be assumed by him. This rule, however, does not obtain where the parties have otherwise stipulated in their agreement. If it is the intention of the parties, and it so appears from the contract, that delivery is to take place at the destination of the property, and that the title is to remain in the consignor until that time, then delivery to the carrier does not divest the title of the vendor to the property, nor pass it to the purchaser, until it reaches its destination, and the hazards of transportation are at the risk of the consignor." Dooley v. New York Cent., etc., R. Co., (1916) 62 Pa. Super. Ct. 237 (no reference to Uniform Act — intrastate shipment).

Title of Consignee to Be Notified in Order Bill.

In the case of a shipment of goods under an order bill of lading, the consignee to be notified, the title to the goods remains in the shipper and can pass to the consignee only on delivery of the bill of lading. Hence it is not a conversion for a carrier to place goods shipped under such a bill in a warehouse with directions not to deliver the goods to the consignee without the production of the bill of lading though the arrangements for the storage are made by the consignee and the warehouseman treats the consignee as the owner of the goods. Booth v. New York Central R. Co., (1921) — Vt.—, 112 Atl. 894 (no reference to Uniform Act — interstate character of shipment ignored).

Title of Consignee Refusing to Pay Draft.

It has been held that the consignee of a shipment of goods who neither pays to the collecting bank a draft drawn on him for the purchase price thereof nor obtains possession of the bill of lading attached to the draft, does not acquire title to the goods and may not sue for the negligent carriage thereof. Lepman v. Chicago, etc., R. Co., (1915) 195 Ill. App. 370 (no reference to Uniform Act — interstate character of shipment ignored). It may be observed that the value of that case as a precedent is somewhat doubtful, the precise form of the bill of lading issued not clearly appearing.

§ 41. Demand, presentation or sight draft must be paid, but draft on more than three days time merely accepted before buyer is entitled to the accompanying bill.— Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order.

COMMISSIONERS' NOTE.

This section covers a question that has caused some litigation (see Williston on Sales, § 290); and is probably warranted by existing law.

Drafts on demand, presentation or sight, are assimilated by section 7 of the Uniform Negotiable Instruments Act. See Brannan Negotiable Instruments (1908), pp. 4 and 43.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section. See Appendix.

The **North Carolina** act also omits this section.— See Laws 1919, ch. 65.

CASE NOTES.

Notation on Straight Bill Referring to Sight Draft as Notice to Carrier.

Where a straight bill of lading contains the words " sight draft against B/L " the carreir under section 41 of the Uniform Act at most has notice that the seller intends to require payment of the draft before the buyer shall be entitled to receive or retain the bill; but inasmuch as a carrier must deliver goods under a straight bill to the consignee named even where the consignee has not the bill in his possession, such notice cannot require the carrier, before delivering the goods to the consignee, to demand the production of the bill of lading or at its peril to learn whether the draft has been paid. Dusal Chemical Co. v. Southern Pac. Co., (1918) 102 Misc. 222, 168 N. Y. S. 617.

Rights of Bank Discounting Time Draft.

A bank discounting a time draft with bill of lading attached acquires title to the property described in the bill conditional on the acceptance of the draft by the drawee and not on the ultimate payment of the draft. Therefore, where the draft is accepted and the bill of lading is surrendered to the drawee, the bank loses all interest in the goods and cannot thereafter claim a lien thereon because of the nonpayment of the draft. Helburn-Thompson Co. v. All Americans Mercantile Corp., (1917) 180 App. Div. 167, 167 N. Y. S. 711 (no reference to Uniform Act — foreign character of shipment ignored).

§ 42. Negotiation defeats vendor's lien.— Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

COMMISSIONERS' NOTE.

This section is covered by the Uniform Sales Act, sections 59 (2) and 62. It was decided in Newhall v. Central Pac. R. Co.,

(1876) 51 Cal. 345, 21 Am. Rep. 713, that a railroad redelivering goods to the seller on receiving notice of stoppage in transitu was liable to a purchaser of a bill of lading issued for the goods, though the purchase was subsequent to the notice to stop. The case has been somewhat criticised by text-writers, but there are no decisions against it, and it seems clearly better to protect the innocent purchaser of the bill than the seller who has voluntarily taken part in the issue of the bill. If the purchaser of the bill is to be protected, the carrier must necessarily be allowed to protect himself by refusing to deliver the goods until the bill of lading is surrendered.

STATUTORY NOTES.

Section 39 of the **Federal** act is practically identical with this section.—See Appendix.

CASE NOTES.

When Redelivery to Seller Justified.

It has been held that a bank holding an order bill of lading with draft attached made out a prima facie case against the carrier by showing that on the refusal of the person to be notified to receive the shipment the carrier redeliver goods to the consignor without the production of the bill of lading, and the carrier, in order to defeat recovery, must show that notwithstanding the nonproduction of the bill of lading, it delivered the goods to the right person or that the right to the goods of the holder of the bill had been adjudicated adversely to him in another proceeding by a court having jurisdiction of the parties and the subject matter. Thus, it was held, the carrier was entitled to show that the holder of the bill was not entitled to the goods because of a preference given to it by the insolvent consignor within four months of an adjudication of bankruptcy. Davenport Sav. Bank v. Chicago, etc., R. Co., (1916) 176 Ia. 745, 158 N. W. 737 (no reference to Uniform Act — interstate character of shipment ignored).

§ 43. When rights and remedies under mortgages and liens are not limited.— Except as provided in Section 42, nothing in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the

carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

COMMISSIONERS' NOTE.

This section is declaratory and is intended to make perfectly clear that neither section 24 nor any other section is intended to be subversive of established laws governing chattel mortgages and liens on goods prior to the time of their delivery to the carrier; in so far at least as such mortgages and liens are good not simply between the parties, but against third parties.

STATUTORY NOTES.

Section 40 of the **Federal** act is practically identical with this section.— See Appendix.

The **Connecticut** act changes this section to read as follows: "Except as provided in section forty-two, no provision in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from the provisions of this act, as against one who, for value and in good faith, immediately prior to the delivery of such goods to the carrier, purchased from the owner, and obtained possession of, the goods subject to the mortgage or lien."— See Laws 1911, ch. 182.

PART IV.

Criminal Offenses.

§ 44. Issue of bill for goods not received.—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

COMMISSIONERS' NOTE.

To insure the fundamental basis on which the value of negotiable bills of lading must rest, it is necessary to punish criminally misrepresentation of fraud in regard to the existence of the goods

behind the bill of lading. Other obvious frauds are aimed at by six following sections.

STATUTORY NOTES.

The **Federal** act substitutes for sections 44 to 50, inclusive, of the Uniform Act, a general penal provision constituting section 41 and providing as follows: "Any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several states or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this Act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both."— See Appendix.

The **Illinois** act adds the words " in the State penitentiary " after the word " imprisonment " in this section.— See Laws 1911, p. 227.

The **North Carolina** act substitutes for sections 44 to 50, inclusive, of the Uniform Act, a general penal provision differing but slightly from section 41 of the Federal act. It constitutes section 41 of the North Carolina act and provides as follows: "Any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment in this state, or with intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing, or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for

value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates or fails to comply with, or aids in any violation of, or failure to comply with any provision of this act, shall be guilty of a felony and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or both."—See Laws 1919, ch. 65, as amended by Laws 1919, ch. 290.

The **Ohio** act adds the words " in the penitentiary " after the word " imprisonment " in this section.—See Laws 1911, p. 138.

§ 45. Issue of bill containing false statement.—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

COMMISSIONERS' NOTE.

See note to section 44.

STATUTORY NOTES.

The **Federal** act omits this section.—See " Statutory Notes " under section 44.

The **Illinois** act adds the words " in the State penitentiary " after the word " imprisonment " in this section.—See Laws 1911, p. 227.

The **North Carolina** act omits this section.—See " Statutory Notes " under section 44.

The **Ohio** act adds the words " in the penitentiary " after the word " imprisonment " in this section.—See Laws 1911, p. 138.

§ 46. Issue of duplicate bills not so marked.—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 7, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both

COMMISSIONERS' NOTE.

See note to section 44.

STATUTORY NOTES.

The **Federal** act omits this section.—See "Statutory Notes" under section 44.

The **Illinois** act adds the words "in the State penitentiary" after the word "imprisonment" in this section.—See Laws 1911, p. 227.

The **Louisiana** act omits the last phrase of this section reading "or by a fine not exceeding five thousand dollars, or by both."—See Laws 1912, Act 94.

The **North Carolina** act omits this section.—See "Statutory Notes" under section 44.

The **Ohio** act adds the words "in the penitentiary" after the word "imprisonment" in this section.—See Laws 1911, p. 138.

§ 47. **Negotiation of bill for mortgaged goods.**—Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

COMMISSIONERS' NOTE.

See note to section 44.

STATUTORY NOTES.

The **Federal** acts omits this section.—See "Statutory Notes" under section 44.

The **Illinois** act adds the words "in the State penitentiary" after the word "imprisonment" in this section.—See Laws 1911, p. 227.

The **North Carolina** act omits this section.—See "Statutory Notes" under section 44.

The **Ohio** act substitutes the word "defraud" for the word "deceive" in this section and adds the words "in the penitentiary" after the word "imprisonment."—See Laws 1911, p. 138.

§ 48. Negotiation of bill when goods are not in carrier's possession.—Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

COMMISSIONERS' NOTE.

See note to section 44.

STATUTORY NOTES.

The **Federal** act omits this section.—See "Statutory Notes" under section 44.

The **Illinois** act adds the words "in the State penitentiary" after the word "imprisonment" in this section; and also adds the words "by causing said fact to be endorsed" after the phrase "without disclosing this fact."—See Laws 1911, p. 227.

The **Missouri** act substitutes the word "felony" for the word "crime" in this section.—See Laws 1917, p. 564.

The **North Carolina** act omits this section.—See "Statutory Notes" under section 44.

The **Ohio** act substitutes the word "defraud" for the word "deceive" in this section and adds the words "in the penitentiary" after the word "imprisonment."—See Laws 1911, p. 138.

§ 49. Inducing carrier to issue bill when goods have not been received.—Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each

offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

COMMISSIONERS' NOTE.

See note to section 44.

STATUTORY NOTES.

The **Federal** act omits this section.— See " Statutory Notes " under section 44.

The **Illinois** act adds the words " in the State penitentiary " after the word " imprisonment " in this section.— See Laws 1911, p. 227.

The **Missouri** act substitutes the word " felony " for the word " crime " in this section.— See Laws 1917, p. 564.

The **North Carolina** act omits this section.— See " Statutory Notes " under section 44.

The **Ohio** act adds the words " in the penitentiary " after the word " imprisonment " in this section.— See Laws 1911, p. 138.

§ 50. Issue of non-negotiable bill not so marked.—Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words " not negotiable " placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

COMMISSIONERS' NOTE.

See note to section 44.

STATUTORY NOTES.

The **Federal** act omits this section.— See " Statutory Notes " under section 44.

The **Illinois** act adds the words " in the State penitentiary " after the word " imprisonment " in this section.— See Laws 1911, p. 227.

The **Missouri** act substitutes the word " felony " for the word " crime " in this section.— See Laws 1917, p. 564.

The **North Carolina** act omits this section.— See " Statutory Notes " under section 44.

The **Ohio** act adds the words " in the penitentiary " after the word " imprisonment " in this section.— See Laws 1911, p. 138.

PART V.

Interpretation.

§ 51. Rule for cases not provided for in this act.— In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern.

COMMISSIONERS' NOTE.

A similar provision is commonly inserted when an attempt is made to reduce to statutory form any topic of the law as in the Negotiable Instruments Law, the Sales Act and Warehouse Receipts Act.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section. See Appendix.

The **North Carolina** act also omits this section.— See Laws 1919, ch. 65.

§ 52. Interpretation shall give effect to purpose of uniformity.— This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

COMMISSIONERS' NOTE.

This section is taken from the Sales Act and Warehouse Receipts Act, in order to induce the courts to consider not primarily the law previously existing in one state, but that existing in the states generally, in construing the present bill.

Although the Negotiable Instruments Act does not contain this section, yet the courts of last resort have rightly applied this rule. See Brannan on Negotiable Instruments Law (1908), page 1, note 2, and cases there cited, and Crawford, Neg. I. L. (3d ed. 1908) p. 3.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section. — See Appendix.

The **Minnesota** act adds to this section the phrase "and also of the United States."—See Laws 1917, ch. 399. The manifest purpose of the addition is to include the Federal act.

The **North Carolina** act omits this section.—See Laws 1919, ch. 65.

§ 53. Definitions.—(1) In this act, unless the context or subject matter otherwise requires:

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith," within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

COMMISSIONERS' NOTE.

The only definitions in this section requiring comment are the last two. The definition of value follows the Uniform Negotiable

Instruments Act, the Uniform Sales Act, the Uniform Warehouse Receipts Act, and the Uniform Transfer of Stock Act, and applies the same doctrine to bills of lading. While weight of authority, aside from statute, may have been opposed to quite so broad a definition of value in transactions in other documents than bills and notes, some courts at least have consistently applied the same rule to all transactions, and certainly so far as bills of lading are concerned it seems unadvisable to make a distinction.

The definition of good faith here given is that recognized by the great weight of authority in the law of bills and notes, and the rule in equity generally seems to be the same.

Statutory Notes.

Section 42 of the **Federal** act contains similar definitions of "action," "bill," "consignee," "consignor," "goods," "holder," "order," "person," and to "purchase," but omits the definitions of "owner," "purchaser," "value," and "in good faith." The following definition is added: "'State' includes any Territory, District, insular possession, or isthmian possession."—See Appendix.

The **New York** act omits from this section the definition of "value."—See Laws 1911, ch. 248; McKinney's Consol. Laws, book 40, p. 287.

The **North Carolina** act omits from this section the definitions of "owner," "purchaser," "value" and "in good faith."—See Laws 1919, ch. 65.

Case Notes.

"Consignee."

Under the definition of "consignee" in this section, the person to whose order the goods are consigned and not the person to be notified is the consignee. Hence the person to be notified cannot be held liable for freight charges under a stipulation in the bill of lading that the consignee shall pay the freight. Pennsylvania R. Co. v. Townsend, (1917) 90 N. J. L. 75, 100 Atl. 855.

"Value."

One who takes by negotiation a bill of lading in payment of a debt due to him by the transferor, gives value for his purchase of the goods. Roland M. Baker Co. v. Brown, (1913) 214 Mass. 196, 100 N. E. 1025.

§ 54. Act does not apply to existing bills.—The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof.

STATUTORY NOTES.

Section 43 of the **Federal** act is identical with this section.—See Appendix.

The **Michigan** act adds to this section the following provision: "Nothing herein contained shall be construed to prohibit express companies from using the customary receipts employed by them in the ordinary transaction of their business."—See Laws 1911, No. 165.

§ 55. Inconsistent legislation repealed.—All acts or parts of Acts inconsistent with this act are hereby repealed.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section.—See Appendix.

The **California** act contains the following provision in lieu of this section: "Article three of chapter three of title seven of part four of division three of the Civil Code is hereby repealed; provided, however, that nothing contained herein shall be construed as limiting in any way the powers of the railroad commission under the public utilities act, or any reenactment, revision or amendment thereof."—See Laws 1919, ch. 365.

The **Minnesota** act changes this section to read as follows: "Section 4495 of General Statutes, 1913, and chapter 414 of the Session Laws of 1909, the same being sections 4322 to 4329, inclusive, of General Statutes, 1913, are hereby repealed, and all acts or parts of acts inconsistent with this act are hereby repealed."—See Laws 1917, ch. 399.

The **North Carolina** act omits this section.—See Laws 1919, ch. 65.

The **Ohio** act omits this section.—See Laws 1911, p. 138.

The **Washington** act changes this section to read as follows: "Sections 3385, 3386, 3387, 3388, 3389, 3390 and 3391 of Remington & Ballinger's Annotated Codes and Statutes of Washington and all acts or parts of acts inconsistent with this act are hereby repealed."—See Laws 1915, ch. 159.

CASE NOTES.

Effect of Act.

The Illinois act did not repeal by implication section 1 of the "act regulating the receiving, transportation and delivery of grain," etc. (Hurd's Stat. 1916, p. 2092; J. & A. ¶ 8920). Shellabarger Elevator Co. v. Illinois Cent. R. Co., (1917) 278 Ill. 333, 116 N. E. 170, L. R. A. 1917E 1011.

§ 56. Time when the act takes effect.— This act shall take effect on the ..... day of ....., one thousand nine hundred and .....

§ 57. Name of act.— This act may be cited as the Uniform Bills of Lading Act.

STATUTORY NOTES.

The **Federal** act has no provision corresponding to this section. — See Appendix.

The **California, New York, North Carolina** and **Ohio** acts omit this section.— See Cal. Laws 1919, ch. 65; N. Y. Laws 1911, ch. 248; N. Car. Laws 1919, ch. 65; Ohio Laws 1911, p. 138.

APPENDIX

FEDERAL BILLS OF LADING ACT

(Act of Aug. 29, 1916, ch. 415, 39 Stat. L. 538; Fed. Stat. Ann. 1918 Supp. p. 72).

[§ 1.] **[Bills of Lading Act — application.]** That bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country, shall be governed by this Act. [39 Stat. L. 538.]

NOTES

Power of Congress.

There can be, apparently, no question as to the power of Congress to deal with and regulate bills of lading for the movement of interstate commerce. United States v. Ferger, (1919) 250 U. S. 199, 39 S. Ct. 445, 63 U. S. (L. ed.) 936 (reversing (S. D. Ohio 1918) 256 Fed. 388), wherein the court said: "That bills of lading for the movement of interstate commerce are instrumentalities of that commerce which Congress under its power to regulate commerce has the authority to deal with and provide for is too

clear for anything but statement, as manifested not only by that which is concluded by prior decisions but also by the exertion of the power by Congress. * * * That as instrumentalities of interstate commerce, bills of lading are the efficient means of credit resorted to for the purpose of securing and fructifying the flow of a vast volume of interstate commerce upon which the commercial intercourse of the country, both domestic and foreign, largely depends, is a matter of common knowledge as to the course of business of which we may take judicial notice. Indeed, that such bills of lading and the faith and credit given to their genuineness and the value they represent are the producing and sustaining causes of the enormous number of transactions in domestic and foreign exchange, is also so certain and well known that we may notice it without proof."

Form of Bill.

It will be observed that the Federal act does not prescribe any particular form for a bill of lading, or enumerate the essential terms of such a bill as does section 2 of the Uniform State Act. In April, 1919, the Interstate Commerce Commission, after an extensive review of the various Federal statutes and of its own and the decisions of the courts pertinent to the subject, formulated and prescribed both a uniform domestic and a uniform export bill of lading for use on the lines of all carriers subject to the Interstate Commerce Act. See Matter of Bills of Lading, (1919) 52 I. C. C. 671.

Purpose of Act.

" The primary purpose of this law is to enlarge and enhance the negotiability features of ' order ' bills of lading and by definitely fixing the law with respect to negotiability, and the imposition of greater responsibility upon carriers, to afford greater protection to those who in the course of commercial transaction handle and deal in such bills." Matter of Bills of Lading, (1919) 51 I. C. C. 690.

So, in Pioneer Trust Co. v. Nashville, etc., R. Co., (Mo. App. 1920) 224 S. W. 109, the court, after denying protection to an innocent holder of an interstate bill of lading, said obiter: " The manifest hardship done the innocent holders of bills of lading by the rule found in the federal cases is alleviated to a great extent by the Pomerene Bill of Lading Act making interstate bills of lading negotiable."

However, in Commercial Nat. Bank v. Seaboard Air Line R. Co., (1918) 175 N. C. 415, 95 E. S. 777, it was said: " There is doubt if the law does or was intended to make bills of lading negotiable in the full sense of the term, that is, to the extent that ordinary commercial paper is so."

Liability of Carrier as Warehouseman.

" The bills of lading act contains no provision respecting transition from liability of a common carrier to that of a warehouseman. Questions of this nature arising in connection with interstate shipments moving under bills of lading issued pursuant to the act to regulate commerce are necessarily federal questions, and the question as to responsibility under the bill of lading is none the less a federal one because it must be resolved by the application of general principles of the common law." Matter of Bills of Lading, (1919) 52 I. C. C. 696.

§ 2. **[Straight bill defined.]** That a bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill. [39 Stat. L. 539.]

§ 3. **[Order bill defined — negotiability.]** That a bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill or in any notice, contract, rule, regulation, or tariff that it is nonnegotiable shall be null and void and shall not affect its negotiability within the meaning of this Act unless upon its face and in writing agreed to by the shipper. [39 Stat. L. 539.]

NOTE

Intrastate Bill Subsequently Becoming Interstate.

A notation on an intrastate bill of lading which in effect restricts its negotiability is not inoperative under this action when the bill is afterwards made an interstate bill without the knowledge or consent of the person intended to be protected by the notation. Rainbolt v. Lamson, (1919) 259 Fed. 546, 170 C. C. A. 508.

§ 4. **[Order bills in parts or sets — liability of carrier.]** That order bills issued in a State for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: Provided, however, That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to

Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing. [39 Stat. L. 539.]

§ 5. **[Word " duplicate " on order bill — liability of carrier.]** That when more than one order bill is issued in a State for the same goods to be transported to any place in the United States on the Continent of North America, except Alaska and Panama, the word " duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: Provided, however, That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word " duplicate " thereon, or to impose the liabilities set forth in this section for failure so to do. [39 Stat. L. 539.]

§ 6. **[Word " nonnegotiable " on straight bill.]** That a straight bill shall have placed plainly upon its face by the carrier issuing it " nonnegotiable " or " not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character. [39 Stat. L. 539.]

§ 7. **[Order bill — limitation of negotiability.]** That the insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. [39 Stat. L. 539.]

§ 8. **[Delivery of goods by carrier — when required — liability for failure to deliver.]** That a carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such demand is accompanied by —

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. [39 Stat. L. 539.]

§ 9. **[Delivery, when justified.]** That a carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is —

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee. [39 Stat. L. 540.]

NOTES

Physical Possession of Bill Sufficient to Justify Delivery.

It is physical possession of the bill which is made by this section a justification for delivery of the goods by the carrier. It is immaterial in what capacity the person holds possession of the bill, and also whether he holds it lawfully or unlawfully, so long as the carrier has no notice of any infirmity of title. Hence one who holds an order bill of lading indorsed in blank as agent for another is a " person in possession " of the bill under this section, to whom the carrier is justified in making delivery provided it has no information that he is not lawfully entitled to the goods. Nor would it matter if the agent's physical possession of the bill were deemed legally the possession of his principal, since in that event the physical delivery of the goods to the agent would likewise be deemed legally a delivery to the principal and satisfy the requirements of this section of the act. Pere Marquette R. Co. v. French, (1921) U. S. Adv. Op. 212, 41 S. Ct. 195, reversing (1919) 204 Mich. 578, 171 N. W. 491.

Delivery to True Owner Though Order Bill in Possession of Shipper.

Construing section 9 of the Federal Act together with sections 17, 18 and 19 thereof, it is clear that " Congress intended to confer upon carriers transporting goods in interstate commerce

the right to deliver the goods to the true owner and to make such delivery a complete defense to an action by a shipper who holds an order bill of lading and who sues to recover damages for a failure to deliver the goods to him." Banik v. Chicago, etc., R. Co., (Minn. 1920) 179 N. W. 899.

§ 10. **[Delivered to one not lawfully entitled — liability.]** That where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he —

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. [39 Stat. L. 540.]

NOTES

Wrongful Delivery to Consignee.

It has been said that the consignee named in a straight bill of lading has no better title to the goods than he would have under an assignment of the bill to him if the shipper was named therein as both consignor and consignee (see section 29 and notes). Hence, a carrier is liable in damages for delivering goods to the assignee of the consignee named in a straight bill of lading after it has received notice from the consignor to deliver the goods to no one but himself. Getchell v. Northern Pac. R. Co., (Wash. 1920) 187 Pac. 707.

Straight Bill Issued by Mistake.

Where a shipper asks for an " order " bill of lading and the carrier's agent by fraud or mistake gives him a " straight " bill, by reason of which the consignee is enabled to obtain the goods without paying an attached draft, the shipper may recover from the carrier the amount thus lost, and the fact that he fails to read the bill of lading given to him does not bar him from relief. Duholm v. Chicago, etc., R. Co., (Minn. 1920) 177 N. W. 772.

§ 11. **[Failure to cancel order bill on delivery — effect.]** That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto. [39 Stat. L. 540.]

NOTES

Duty of Carrier to Require Surrender of Bill of Lading.

There is nothing in the Federal act which imposes on the carrier a specific duty to the shipper to take up the bill of lading. Pere Marquette R. Co. v. French, (1921) U. S. Adv. Op. 212, 41 S. Ct. 195 (reversing (1919) 204 Mich. 578, 171 N. W. 491), wherein the court said: "Under § 8 the carrier is not obliged to make delivery except upon production and surrender of the bill of lading; but it is not prohibited from doing so. If instead of insisting upon the production and surrender of the bill, it chooses to deliver in reliance upon the assurance that the deliveree has it, so far as the duty to the shipper is concerned, the only risk it runs is that the person who says that he has the bill may not have it. If such proves the case, the carrier is liable for conversion, and must, of course, indemnify the shipper for any loss which results. Such liability arises not from the statute, but from the obligation which the carrier assumes under the bill of lading."

Liability of Carrier for Failure to Comply with Surrender Clause in Bill of Lading.

Where a carrier delivers goods in good faith to the person in possession of the order bill of lading, properly indorsed, its failure to require surrender of the bill as provided in that instrument does not render the delivery a conversion unless loss to the shipper or a subsequent purchaser of the bill results from such failure. Where the cause of the shipper's loss is not the failure to require surrender of the bill, but the improper acquisition of it by the deliveree, or his improper subsequent conduct, the mere technical failure to require presentation and surrender of the bill will not make the delivery a conversion. Pere Marquette R. Co. v. French, (1921) U. S. Adv. Op. 212, 41 S. Ct. 195, reversing (1919) 204 Mich. 578, 171 N. W. 491.

Shipper Repurchasing Bill of Lading as Bona Fide Purchaser.

A shipper who repurchases a bill of lading with full knowledge of its wrongful surrender by a bank holding it for collection and the

subsequent delivery of the goods by the carrier to the holder of the bill without requiring a surrender of the bill by him, cannot claim the protection of this section of the act as a bona fide purchaser. "The purchaser whom the act protects is he who is entitled to assume that the carrier has not delivered the goods, and will not thereafter deliver them except to a person who holds the bill of lading." Pere Marquette R. Co. v. French, (1921) U. S. Adv. Op. 212, 41 S. Ct. 195, reversing (1919) 204 Mich. 578, 171 N. W. 491.

§ 12. **[Delivery of part of goods — liability of carrier on bill.]** That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill has been issued and fails either —

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. [39 Stat. L. 540.]

§ 13. **[Alteration, etc., of bill.]** That any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. [39 Stat. L. 540.]

NOTE

Waiver of Terms of Bill.

Section 10 of the Uniform Bill of Lading which the Interstate Commerce Commission has declared to be in strict conformity with the requirements of the Federal Act, reads as follows: "Any alteration, addition, or erasure in this bill of lading, which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor." With respect to the contention that the language used in this section permits a waiver of any of the terms or conditions of the bill of lading, the Commission has said: "It obviously refers only to those provisions which are peculiar to a given

bill of lading and which are subject to alteration, addition, or erasure, such as the description of the property, routing, etc., and does not authorize a waiver of those uniform provisions which are incorporated in the carriers' published tariffs and are presumed to be a part of the transportation contract, and, as such, binding upon both carrier and shipper." See Decker v. Director Gen., etc., R. Co., (1919) 55 I. C. C. 453.

§ 14. **[Loss, etc., of bill — delivery of goods on order of court.]** That where an order bill has been lost, stolen, or destroyed a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, theft, or destruction and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: *Provided,* a voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [39 Stat. L. 540.]

§ 15. **[Bill not an original one — liability of carrier.]** That a bill, upon the face of which the word " duplicate " or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. [39 Stat. L. 541.]

§ 16. **[Refusal of carrier to deliver — excuse from liability.]** That no title to goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. [39 Stat. L. 541.]

§ 17. **[Interpleader.]** That if more than one person claim the title or possession of goods, the carrier may require all known

claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate. [39 Stat. L. 541.]

§ 18. **[Adverse claim — excuse from liability to deliver.]** That if some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [39 Stat. L. 541.]

§ 19. **[Failure to deliver — defense — right or title of third person.]** That except as provided in the two preceding sections and in section nine, no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand. [39 Stat. L. 541.]

§ 20. **[Loading of goods by carrier — counting packages — ascertaining kind and quantity — contents of bill.]** That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. [39 Stat. L. 541.]

§ 21. **[Loading of goods by shipper — contents of bill — weighing facilities by shipper.]** That when package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods

are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words " Shipper's weight, load and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: *Provided, however*, Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words " Shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. [39 Stat. L. 541.]

NOTE

Discrepancies in Elevator Weights.

With respect to the advisability of retaining in the Uniform Bill of Lading a provision that carriers shall not be liable for " differences in the weights of grain, seed or other commodities caused by * * * discrepancies in elevator weights," the Interstate Commerce Commission has said: " Under section 21 of the bills of lading act above referred to, where a shipper of bulk freight has installed and maintains adequate weighing facilities, the carrier must, upon written request, and after reasonable opportunity so to do, ascertain the kind and quantity of grain. This gives the carrier the opportunity of weighing the grain when it is shipped. The arrangement, however, does not provide a like opportunity at destination, where, for instance, grain is delivered into an elevator and weighed by the elevator or consignee. The carrier is liable,

both at common law and under the federal statute, for any actual loss of goods caused by it while in transit. If a difference in weights results from actual loss of goods so caused by it, the carrier must pay the claim for such loss. Under the law it is the carrier's duty to correct, and the shipper's duty to pay, freight charges based upon correct, not estimated, weights. The claimed loss presents a question of fact. Whether or not a ' discrepancy ' in elevator weights results from actual loss of the commodity or an error, human or mechanical, in the weighing operations, is a question of fact to be determined from all the evidence. The burden of proof to show what is the correct weight should depend, in a measure at least, upon which of the parties, carrier, or shipper, is responsible for the accuracy of the weights. It would appear, therefore, that the disputed provision relative to ' discrepancies in elevator weights ' is of no real effect in limiting the liability of the carrier and is mere surplusage.'' Matter of Bills of Lading, (1919) 52 I. C. C. 694.

§ 22. **[Terms of bill as binding carrier — liability for acts of agent.]** That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. [39 Stat. L. 542.]

§ 23. **[Garnishment attachment, etc., of goods in carrier's possession — effect.]** That if goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they can not thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. [39 Stat. L. 542.]

NOTES

Delivery to Carrier by Bailee.

See " Case Notes " under section 24 of the Uniform Act, supra.

Enjoining Negotiation of Bill in Foreign Jurisdiction.

See " Case Notes " under section 24 of the Uniform Act, supra.

Replevin by Owner of Goods.

See " Case Notes " under section 24 of the Uniform Act, supra.

§ 24. **[Injunction, etc., in attaching bill.]** That a creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process. [39 Stat. L. 542.]

NOTE

Enjoining Negotiation of Bill in Foreign Jurisdiction.

See " Case Notes " under section 24 of the Uniform Act, supra.

§ 25. **[Liens of carrier — custom.]** That if an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. [39 Stat. L. 542.]

§ 26. **[Sale of goods to satisfy lien — effect.]** That after goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill. [39 Stat. L. 542.]

§ 27. **[Order bill — negotiation by delivery.]** That an order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. [39 Stat. L. 542.]

§ 28. **[Order bill — negotiation by indorsement.]** That an order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. [39 Stat. L. 543.]

§ 29. **[Transfer of bill by delivery — negotiation of straight bill.]** That a bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented hereby. A straight bill can not be negotiated free from existing equities, and the indorsement of such a bill gives the transferee no additional right. [39 Stat. L. 543.]

NOTE

Rights of Assignee of Straight Bill.

The effect of the statute is to place the assignee of a straight bill of lading in all respects in the shoes of his assignors. The language of this section "plainly means that whatever right, legal or equitable, may exist in the property described in the bill of lading in favor of some one other than the assignor of the bill of lading as against him, continues to exist as against his assignees." Quality Shingle Co. v. Old Oregon Lumber, etc., Co., (Wash. 1920) 187 Pac. 705. See also Getchell v. Northern Pac. R. Co., (Wash. 1920) 187 Pac. 707.

§ 30. **[Order bill — by whom negotiated.]** That an order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. [39 Sat. L. 543.]

§ 31. **[Title acquired by person negotiating order bill.]** That a person to whom an order bill has been duly negotiated acquires thereby —

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. [39 Stat. L. 543.]

§ 32. **[Title acquired by person to whom bill has been delivered but not negotiated.]** That a person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods. [39 Stat. L. 543.]

§ 33. **[Transfer of order bill for value by delivery — right to compel negotiation.]** That where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [39 Stat. L. 543.]

§ 34. **[Implied warranties arising out of transfer of bill.]** That a person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants —

(a) That the bill is genuine;

(b) That he has a legal right to transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the bill.

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby. [39 Stat. L. 543.]

§ 35. **[Indorsement of bill — liability of indorser.]** That the indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. [39 Stat. L. 544.]

§ 36. **[Mortgages, etc., of bill for security — implied warranties.]** That a mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described. [39 Stat. L. 544.]

§ 37. **[Negotiation of bill — impairment of validity.]** That the validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion. [39 Stat. L. 544.]

§ 38. **[Possession of order bill after sale, etc., of goods — subsequent negotiation — effect.]** That where a person, having sold, mortgaged, or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged, or pledged the order bill representing such goods, con-

tinues in possession of the order bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. [39 Stat. L. 544.]

§ 39. **[Seller's lien or right of stoppage in transitu — defeat of rights of purchaser for value.]** That where an order bill has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. [39 Stat. L. 544.]

§ 40. **[Mortgagee or lien holder — limitation of rights and remedies.]** That, except as provided in section thirty-nine, nothing in this Act shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. [39 Stat. L. 544.]

§ 41. **[Offenses — violating provisions of Act.]** That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or

fails to comply with, or aids in any violation of, or failure to comply with any provision of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both. [39 Stat. L. 544.]

NOTE

Validity of Provision.

The authority of Congress to regulate commerce embraces the power to forbid and punish the fraudulent fabrication and use of fictitious interstate bills of lading. United States v. Ferger, (1919) 250 U. S. 199, 39 S. Ct. 445, 63 U. S. (L. ed.) 936 (reversing (S. D. Ohio 1918) 256 Fed. 338), wherein the court said: "Was the court below right in holding that Congress had no power to prohibit and punish the fraudulent making of spurious interstate bills of lading as a means of protecting and sustaining the vast volume of interstate commerce operating and moving in reliance upon genuine bills? To state the question is to manifest the error which the court committed, unless that view is overcome by the reasoning by which the conclusion below was sought to be sustained. What was that reasoning? That the bills were but 'pieces of paper fraudulently inscribed' and 'did not affect interstate commerce, directly or indirectly . . . and had nothing whatsoever to do with it, or with any existing instrumentality of it.' But this rests upon the unsustainable assumption that the undoubted power which existed to regulate the instrumentality, the genuine bill, did not give any power to prevent the fraudulent and spurious imitation. It proceeds further, as we have already shown, upon the erroneous theory that the credit and confidence which sustains interstate commerce would not be impaired or weakened by the unrestrained right to fabricate and circulate spurious bills of lading apparently concerning such commerce. Nor is the situation helped by saying that as the manufacture and use of the spurious interstate commerce bills of lading were local, therefore the power to deal with them was exclusively local, since the proposition disregards the fact that the spurious bills were in the form of interstate commerce bills which in and of themselves involved the potentiality of fraud as far-reaching and all-embracing as the flow of the channels of interstate commerce in which it was contemplated the fraudulent bills would circulate. As the power to regulate the instrumentality was coextensive with interstate commerce, so it must be, if the authority to regulate is not to be denied, that the right to exercise such authority for the purpose of guarding against the injury which would result from the making and use of spurious imitations of the instrumentality must be equally extensive." See to the same effect United States v. Ferger, (1919) 250 U. S. 207, 39 S. Ct. 447, 63 U. S. (L. ed.) 941 (reversing (S. D. Ohio 1918) 256 Fed. 388), decided on the authority of the foregoing case, the court saying: "This case is disposed of by the ruling just announced in No. 776, ante, 199.

The indictment here was for conspiring to do the various acts charged in the previous case, that is, the fraudulent fabrication and uttering of the same fictitious bills of lading and the obtaining of money thereon by delivering the same to the Second National Bank of Cincinnati as collateral. The demurrer which was sustained by the court below in the previous case was also sustained as to this. While there is a separate writ of error and a separate record in this case, it is conceded by all parties that the cases are in legal principle the same and that the decision of one concludes the other. It follows, therefore, that for the reasons stated in the previous case, No. 776, the judgment in this must be and it is reversed and the case remanded for further proceedings in conformity with this opinion."

§ 42. **[Definitions.]** First. That in this Act, unless the context of subject matter otherwise requires —

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading governed by this act.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"State" includes any Territory, District, insular possession, or isthmian possession. [39 Stat. L. 545.]

§ 43. **[Retroactive effect.]** That the provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof. [39 Stat. L. 545.]

§ 44. **[Invalidity of part of Act — effect as to remainder.]** That the provisions and each part thereof and the sections and each part thereof of this Act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part

thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof. [39 Stat. L. 545.]

§ 45. **[When Act becomes effective.]** That this Act shall take effect and be in force on and after the first day of January next after its passage. [39 State. L. 545.]

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